

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - -

UNITED STATES OF AMERICA	:	CRIMINAL NO. 11-571
v.	:	Philadelphia, Pennsylvania
WILLIAM WALLACE WILSON	:	July 23, 2012
UNITED STATES OF AMERICA	:	1:37 o'clock p.m.
UNITED STATES OF AMERICA	:	CRIMINAL NO. 11-573
v.	:	
ANDY DURIS	:	
UNITED STATES OF AMERICA	:	CRIMINAL NO. 11-574
v.	:	
MICHAEL HOMER	:	
UNITED STATES OF AMERICA	:	CRIMINAL NO. 11-580
v.	:	
JAMES SWAN	:	
UNITED STATES OF AMERICA	:	CRIMINAL NO. 11-582
v.	:	
MICHAEL PATTERSON	:	
UNITED STATES OF AMERICA	:	CRIMINAL NO. 11-583
v.	:	
VICTOR PHILLIP	:	
UNITED STATES OF AMERICA	:	

CONSOLIDATED HEARING ON MOTION FOR PRE-JUDGMENT PROBATION
BEFORE THE HONORABLE TIMOTHY R. RICE
UNITED STATES MAGISTRATE JUDGE

- - -

Laws Transcription Service
48 W. LaCrosse Avenue
Lansdowne, PA 19050
(610) 623-4178

APPEARANCES:

For the Government:

ASHLEY K. LUNKENHEIMER, ESQUIRE
FAITHE MOORE TAYLOR, ESQUIRE
U.S. Attorney's Office
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106

For the Defendant
William W. Wilson:

PAUL M. MESSING, ESQUIRE
Kairys Rudovsky Messing & Feinberg
The Cast Iron Building, Suite 501S
718 Arch Street
Philadelphia, PA 19106

For the Defendant
Andy Duris:

STEPHEN D. MOLINEUX, ESQUIRE
225 MacDade Boulevard
Collingdale, PA 19023

For the Defendant
Michael Homer:

DAVID LAIGAIE, ESQUIRE
Dilworth Paxson LLP
1500 Market Street, 3500E
Philadelphia, PA 19102

For the Defendant
James Swan:

KAI N. SCOTT, ESQUIRE
Federal Community Defender Office
Curtis Center, Suite 540 West
601 Walnut Street
Philadelphia, PA 19106

For the Defendant
Michael Patterson:

THOMAS A. DREYER, ESQUIRE
6 Dickinson Drive
Building 100, Suite 106
Chadds Ford, PA 19317

For the Defendant
Victor Phillip:

PETER J. SCUDERI, ESQUIRE
419 Avenue of the States, Suite 405
Chester, PA 19013

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Audio Operator:

Christian Henry

Transcribed by:

Jo-Anne L. Hutt

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3 THE COURT: Good afternoon, everyone. Please be
4 seated.

ALL COUNSEL: Good afternoon, your Honor.

6 THE COURT: All right. Why doesn't everybody
7 introduce themselves so we have it all clear for the court
8 reporter. Our court reporter is Christian, so we're lucky to
9 have him.

10 Ms. Taylor?

11 MS. TAYLOR: Good afternoon, your Honor.

12 Faithe Moore Taylor on behalf of the Government.

13 MS. LUNKENHEIMER: Ashley Lunkenheimer. And with me
14 at counsel table is Division Investigator Scott Davis from
15 the D.E.A.

16 MR. DAVIS: Your Honor.

17 THE COURT: Agent.

18 MR. SCUDERI: Good afternoon, your Honor.

19 Peter Scuderi. I'm here for Victor Phillip. I'm
20 also sitting here for Steve Molineux who will arrive late,
21 and the people he represents --

22 MS. TAYLOR: Andy Duris and George Torres.

23 MR. SCUDERI: Right, okay.

24 MS. SCOTT: Good afternoon, your Honor.

25 Kai Scott for --

1 THE COURT: Ms. Scott.

2 MS. SCOTT: -- Mr. Swan.

3 THE COURT: Good afternoon.

4 MR. DREYER: Good afternoon, your Honor.

5 Tom Dreyer for Michael Patterson.

6 THE COURT: Mr. Dreyer.

7 MR. LAIGAIE: Good afternoon, your Honor.

8 Dave Laigaie, and I'm here for my Mike Homer who's
9 present in the courtroom today.

10 THE COURT: Good to see you again --

11 MR. O'MEARA: Good afternoon --

12 MR. LAIGAIE: Good afternoon.

13 THE COURT: -- Mr. Laigaie.

14 MR. O'MEARA: I'm sorry. Good afternoon, your
15 Honor.

16 Steven O'Meara on behalf of (indiscernible).

17 THE COURT: Thanks for coming on such short notice.

18 All right. We were going to continue the hearing.

19 Where are we going next?

20 MS. LUNKENHEIMER: Your Honor, I just have a brief
21 matter before, and otherwise we can go straight into the
22 continuing --

23 THE COURT: Okay.

24 MS. LUNKENHEIMER: -- testimony.

25 We have provided counsel with an exhibit marked, I

1 believe, Jones 1, and it is an exhibit that contains charts
2 that relate to the individuals who are here today as well as
3 other individuals listed by name who are charged in this
4 case, and it talks about their absence records, and
5 corrective actions taken, and reportable injuries that --
6 that may have happened that related to them.

7 And at this point in time, the Government, we just
8 received this exhibit this morning, so we have not had a
9 chance to file a protective order, but we would ask that
10 because it lists not only information specific to these
11 individuals, and their work history, and their personal
12 histories, that we ask that it be placed under seal, but it
13 also names other defendants who aren't present today.

14 So we will be moving for a protective order, and for
15 the purposes of this hearing, we ask that the document,
16 although it will be publicly displayed, be ultimately placed
17 under seal and that the counsel abide by the other -- the
18 terms of the protective order.

19 THE COURT: How are we going to do that if it's
20 going to be publicly displayed in the courtroom?

21 COUNSEL: It's just electronically under seal, so...

22 MS. LUNKENHEIMER: Normally under seal means it's
23 never shown to anybody. We would have the -- ultimately
24 we'll provide the Court with a copy of all the exhibits. We
25 will certainly keep them for the record as well, and if --

1 and, so, we would ask that those not be able to be
2 disseminated, other than the brief moments that they're
3 displayed here in court.

4 THE COURT: Well, but once it's displayed in court,
5 it's in the public domain, and don't I have to balance the
6 public right of access to judicial proceedings with whatever
7 overriding interest you have in keeping it sealed?

8 MS. TAYLOR: May I? I'm sorry, your Honor.

9 THE COURT: No, sure. It's up to Ms. Lunkenheimer.

10 MS. LUNKENHEIMER: No, I want to see --

11 MS. TAYLOR: Ms. Lunkenheimer's the first --

12 MS. LUNKENHEIMER: -- what she wants to say, and I
13 will always defer to Ms. Taylor.

14 MS. TAYLOR: Well --

15 MS. LUNKENHEIMER: Oh, okay.

16 MS. TAYLOR: -- that's dangerous.

17 Your Honor, what the Government is requesting is
18 that the electronic record of those documents be sealed
19 outside the parameters of this courtroom.

20 Typically, this would be provided as it has been in
21 discovery, so in that instance, it's public to counsel, it's
22 public to us, and when discovery is shown in the courtroom,
23 it's -- during the hearing it's obviously public to those in
24 the courtroom.

25 What we are asking is that the electronic record be

1 sealed, so that others not affiliated with this matter,
2 cannot access the personal information of people who are on
3 that -- on those charts.

4 THE COURT: What does it have, social security
5 numbers or --

6 MS. TAYLOR: It has their attendance records, it has
7 their employment information, information that we believe
8 should not be readily accessible outside of the confines of
9 this hearing.

10 THE COURT: Why not?

11 MS. TAYLOR: Because it's private as to those
12 defendants, and they are not here. This is unusual --

13 THE COURT: But they've all filed motions and you're
14 responding to their motions.

15 MS. TAYLOR: No, sir. 12 of the misdemeanor
16 defendants -- 13 -- have filed their motions or will file
17 their motions. Their information is included.

18 But for the purposes of this chart, it includes all
19 arrested defendants at Boeing, which will include 22-some-odd
20 felony defendants who have not sought this relief. So they
21 have not put those issues into question, and it is their
22 information, as well as the defendants who are not here
23 today, who we seek to seal.

24 But in doing so, we would just seal the whole thing
25 electronically. The felony defendants have not sought this.

1 THE COURT: Yes, but why are we getting into them
2 then?

3 MS. TAYLOR: Because we're dealing with -- our
4 argument is the general impact of the use at Boeing, whether
5 you were a seller, or whether you were a user.

6 What we have asked Boeing to do is to go back and
7 look at the individuals we arrested during this
8 investigation, and make certain comparisons to like union
9 employees. That includes not just the 13 who will be before
10 you, but also the additional 20-some-odd felony defendants
11 who will not be before you. So the chart is inclusive of the
12 universe of people we arrested.

13 THE COURT: Well, my view is anything introduced in
14 court is public record. I mean I don't know if anybody --
15 does anybody else want to be heard on this? Any of the
16 defense?

17 MR. LAIGAIE: No, your Honor.

18 MR. DREYER: No, your Honor.

19 MR. SCUDERI: No, your Honor.

20 THE COURT: And I have to balance the public right
21 of access. There's a presumptive right of access to judicial
22 proceedings, there's a presumptive right of access to the
23 evidence, and I have to balance that with the need for
24 secrecy and sealing, and I don't think the reasons you stated
25 override that.

1 MS. TAYLOR: We may be overly-cautious about this.

2 THE COURT: I understand.

3 MS. TAYLOR: I concede that to the Court.

4 THE COURT: Okay.

5 MS. TAYLOR: So we accept the Court's ruling.

6 THE COURT: Okay. All right. So I'm not going to
7 seal it.

8 All right. Where do you want to go next, Ms.
9 Lunkenheimer?

10 MS. LUNKENHEIMER: Then I was going to present a
11 witness if you're ready to --

12 THE COURT: Sure, I'm ready.

13 MS. LUNKENHEIMER: -- proceed with additional
14 testimony.

15 The Government would call David Bouse.

16 THE COURT: Christian, do you want to swear him in
17 when he gets up here?

18 THE CLERK: Yes.

19 THE COURT: Mr. Bouse, how are you?

20 MS. BOUSE: Good.

21 DAVID W. BOUSE, after having first been duly sworn
22 as a witness, was examined and testified as follows:

23 THE COURT: All right, Ms. Lunkenheimer.

24 MS. LUNKENHEIMER: Thank you, your Honor.

25 DIRECT EXAMINATION

Bouse - Direct

10

1 BY MS. LUNKENHEIMER:

2 Q Mr. Bouse, can you please tell the Court by whom you are
3 employed?

4 A I'm employed by the Boeing Company.

5 Q And what is your title?

6 A I'm the Director of Human Resources for the Philadelphia
7 site.

8 Q Generally, can you describe your duties as director?

9 A As the Director of Human Resources, I oversee all the HR
10 activities that ongoing -- that go on at the Philadelphia site,
11 including policy, interpretation, wage and benefits, parts of
12 the labor relations contract, administration, general
13 questions on discipline, the whole gamut of HR activities.

14 Q And would that include all the policies and procedures
15 that relate to employees who work for the -- the facility?

16 A That is correct.

17 Q How long have you been in that capacity?

18 A I've been in Philadelphia since March of 2010.

19 Q Just to go back a little bit into your background, do you
20 have a longer HR background than the last two-and-a-half
21 years?

22 A Yes, approximately 35 years.

23 Q And how many of those years have been with the Boeing
24 Company?

25 A So I've been with the Boeing Company back to 1980.

Bouse - Direct

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1 Q And is that actually when you went -- worked for a
2 subsidiary called the McDonnell Douglas Corporation?

3 A That is correct.

4 Q And then when was that acquired by Boeing?

5 A The acquisition was in '96, and the merger was finalized,
6 I believe, in the '98 time frame.

7 Q Now, just briefly moving through your jobs at -- at the
8 Boeing Company, they were always in the human resources area?

9 A Yes, that's correct.

10 Q And can you just describe the positions you had as you
11 moved through, ending with your current position?

12 A So previous to being in Philadelphia, I was the Director
13 of Human Resources for the Maintenance and Mod and Upgrades
14 business within Global Services, and that was based on San
15 Antonio, Texas, so I had HR responsibilities in multiple
16 states across the United States, where our business was
17 predominantly aircraft maintenance, overhaul, and repair.
18 And in that vein, I administered policies, monitored wage
19 progressions, administered benefits plans, resolved employee
20 differences, administered discipline, once again, typical HR
21 activities.

22 Q Okay. And just focusing in on your time in San Antonio,
23 does Boeing have national policies and procedures or are they
24 local in nature?

25 A The vast majority of the Boeing Company policies are

Bouse - Direct

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1 national in nature. There are some differences that may be
2 incorporated into those national policies that are specific
3 to a region or to a specific state.

4 Q So would it be fair to say then, in your time in San
5 Antonio, which was, I believe, for -- for spanning
6 approximately a decade; is that correct?

7 A That's correct.

8 Q And that was right before you came to Philadelphia?

9 A That's correct.

10 Q Would you have been overseeing -- acknowledging that
11 there will be minor regional differences -- would you have
12 been overseeing HR policies and practices that are similar to
13 those in Philadelphia or even exactly the same?

14 A That is correct.

15 Q Okay. Now, can you briefly describe to the Court what is
16 manufactured at the Boeing Company's Ridley Park,
17 Pennsylvania, facility?

18 A So in Ridley Park we actually manufacture the Chinook
19 Helicopter, so we do the design, the support, post-production
20 support, and the manufacture of the air frame. We deliver
21 the final product to the customer from Ridley Park.

22 In addition to that, we build the fuselage for the
23 V-22 Osprey, and we do what's known as stuff that cockpit,
24 meaning we put the wires and the hydraulic lines in, and we
25 transport that fuselage down to Amarillo, Texas, with our

Bouse - Direct

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1 partner company, Bell, who does the final assembly, flight
2 test, and sell-off of the product to the customer.

3 Q So for the Chinook, is it fair to say that from suit to
4 nuts the entire production process is done at the Ridley
5 Park, Pennsylvania, facility?

6 A That's correct.

7 Q And that for the V-22 Osprey, you don't put in the
8 engine, the wings, certain things, but the main cabin and all
9 of the pieces of that, except as they relate to those -- the
10 engines and things, are made in Ridley Park?

11 A That is correct.

12 Q And have you reviewed the positions held by the 35 Boeing
13 employees that were charged by the Federal Government in
14 these related cases?

15 A Yes, I have.

16 Q And did everyone work directly on or facilitate the
17 production of either the Chinook, the Osprey, or both?

18 A Yes.

19 Q Now, have you, as part of your responsibilities as
20 Director of HR, did you assist in the preparation materials
21 to give an overview of what is done at the Ridley Park plant,
22 including the manufacturing and the human resources related
23 policies?

24 A Yes, I did.

25 MS. LUNKENHEIMER: Your Honor, am I free to approach

Bouse - Direct

14

1 --

2 THE COURT: Oh, you can.

3 MS. LUNKENHEIMER: -- as appropriate?

4 THE COURT: Yes, you don't have to ask.

5 (Pause.)

6 BY MS. LUNKENHEIMER:

7 Q Okay. Mr. Bouse, can you review what I've just handed to
8 you?

9 A Yes, it's a document called Wi-Mobility (ph). This was a
10 document that I asked the HR team to put together to help
11 them in recruiting of people both inside the company and
12 external to the company to encourage them to join the Boeing
13 Company in Philadelphia.

14 MS. LUNKENHEIMER: Can you all hear when he's
15 talking? It's not going to the microphone.

16 Can you move -- either speak up or just move a
17 little bit towards the microphone?

18 Thank you.

19 BY MS. LUNKENHEIMER:

20 Q And, so, this is a pamphlet that was put together at your
21 direction?

22 A Yes.

23 Q And just briefly, Wi-Mobility, can you explain to the
24 Court what that means?

25 A Over the last three years or so, we've had several

Bouse - Direct

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1 different reorganizations within Boeing Defense and Space,
2 specifically within the Boeing Military Aircraft Company, and
3 when I first got to the Philadelphia site in 2010, we were
4 really referred to as the Rotor Craft Division. And in
5 October of 2010, that was reorganized into a competency-based
6 divisions, so the Rotor Craft Division, as it had formerly
7 been known, disappeared, and a Mobility Division took its
8 place. And within Mobility, we included the Chinook, the V-
9 22, C-17, and the KC-46 tanker programs.

10 Q And just for the layperson, is that because those
11 aircraft have some relationship to mobility?

12 A Yes, exactly. They're principally used to move equipment
13 and troops around the world, work on humanitarian missions,
14 things of that nature.

15 MS. LUNKENHEIMER: Your Honor, may I please publish
16 HR-15, the exhibit I presented to Mr. Bouse?

17 THE COURT: Any objection?

18 MR. SCUDERI: No objection.

19 MR. LAIGAIE: No objection.

20 THE COURT: Sure.

21 MS. LUNKENHEIMER: Okay. Just put up the first
22 page.

23 (Discussion held off the record.)

24 MS. LUNKENHEIMER: That's why I started with the
25 first page.

Bouse - Direct

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1 (Discussion held off the record.)

2 THE COURT: You have very nice sound effects.

3 MS. LUNKENHEIMER: Yes, I do.

4 (Laughter.)

5 (Discussion held off the record.)

6 THE COURT: Do you have any insight on this,
7 Christian? Any insight on how to get this working?

8 MS. LUNKENHEIMER: There we go.

9 THE COURT: There we go.

10 SPEAKER: We got it.

11 THE COURT: Good job, Christian.

12 MS. LUNKENHEIMER: It was the computer and not our
13 operator, I am sure.

14 BY MS. LUNKENHEIMER:

15 Q All right. And this is the pamphlet we were talking
16 about?

17 A That is correct.

18 Q Okay. And, so, you mentioned -- and it does give an
19 overview of the plant -- the helicopters that are
20 manufactured.

21 A Yes.

22 So I'll turn to your attention to Page 10.

23 (Discussion held off the record.)

24 THE CLERK: Can you see it, your Honor?

25 THE COURT: Yes, I just had to move the monitor.

Bouse - Direct

17

1 (Pause.)

2 BY MS. LUNKENHEIMER:

3 Q And on that page it says the H-47 Chinook.

4 Can you just tell the Court what that -- the next
5 two pages will indicate to the Court about the plane?

6 A It basically gives the outline and the history of the
7 Chinook helicopter, the number of countries we're delivering
8 to, some of the capabilities of the helicopter, and what our
9 current models are when they first went into service, and
10 approximately how many are still in service around the world.

11 Q And, so, on Page 11, for example, on the second to the
12 last paragraph, does this describe all of the countries and
13 military units that are -- or many of the countries and
14 military units -- that are currently using the Chinook?

15 A Yes, it does.

16 Q Okay. And then the next page, Page 12, does that do a
17 similar thing for the Osprey?

18 A Yes, it basically takes you through the history of the
19 Osprey as it was developed and fielded.

20 Q Okay. Now, going beyond that, I asked you whether or not
21 this -- this brochure indicates some of the HR policies and
22 practices.

23 If we turn further into that, specifically focusing
24 on Page 18, can you describe to the Court what is represented
25 there?

Bouse - Direct

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1 A So on Page 18, we wanted to make sure that we gave an
2 overall prospective of the benefits that the Boeing Company
3 provides to new employees. So we talked about our Boeing
4 Well-Being Programs, both on physical, financial, emotional
5 health, things of that nature, that are delivered through our
6 EAP services.

7 Q And just for the record, EAP stands for Employee
8 Assistance Program?

9 A That is correct.

10 Q And then just lastly on Page 19, the last section there,
11 medical coverage, can you please read to the Court or tell
12 the Court about what is covered under medical coverage?

13 A The coverage for certain preventative care services such
14 as annual physicals, well baby, generally at little or no
15 cost to the employee, coverage for doctor visit, surgery, and
16 hospital care, vision, coverage for routine eye exams,
17 glasses, contacts covered, prescription drug, including
18 retail mail order options, also coverage for mental health
19 and substance abuse services are all covered within our
20 health care plans.

21 Q And, so, who exactly is this brochure distributed to
22 again, just to be clear?

23 A This -- this brochure is distributed to people that we
24 extend an offer to that are external to the company. In some
25 cases we give this out internally to people that are

Bouse - Direct

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1 transferring in from different parts of the company. And
2 it's to help familiarize them with the Philadelphia site and
3 everything that is available for them, as well as what we
4 actually build and produce at the site.

5 Q Okay. Now, are you, as a result of your duties as
6 director, are you also familiar with all the different jobs
7 that you hire employees into?

8 A Yes.

9 MS. LUNKENHEIMER: And I'm going to just show him
10 the ...

11 (Pause.)

12 BY MS. LUNKENHEIMER:

13 Q I'm showing you what's been marked as HR Exhibit 8.

14 Can you please review that and tell the Court what
15 that is?

16 A (Witness complies.)

17 Yes, this exhibit is the consolidation of several
18 different job classifications that have existed for a number
19 of years that were combined during contract negotiations into
20 a new classification called composite fabricator. And in
21 combining those job descriptions, essentially what takes
22 place is all of the different previous jobs are pulled
23 together, and all of the duties and responsibilities included
24 in each of those, are now part of the new job classification.

25 Q Okay. So just to be clear.

Bouse - Direct

20

1 You did mention negotiations. Is that with a union?

2 A Yes.

3 Q Which union is that?

4 A The UAW.

5 Q Are a large number of the employees who work on the
6 manufacturing of the Chinook and Osprey members of the UAW?

7 A That is correct.

8 Q And are almost all, but not all of the defendants who are
9 charged by the Government, also members of the UAW?

10 A That is correct.

11 Q Okay. And, so, if any -- this one is titled "Composite
12 Fabricator" -- so if any of the individuals charged were
13 composite fabricators, would this be their official job
14 description for that -- that job?

15 A This would be the official job description for the job,
16 because it combines all of the previous jobs that were
17 previously broken down in other contracts and brought
18 together under a single title to allow greater flexibility
19 and growth and development of the work force.

20 Q And, so, in principle, should anybody who is a composite
21 fabricator be able to do some, if not all, of the different
22 jobs specified in this packet?

23 A That's correct.

24 Q Okay.

25 (Pause.)

Bouse - Direct

21

1 MS. LUNKENHEIMER: For the record, I'm showing Mr.
2 Bouse what's been marked as Exhibit HR-9.

3 THE COURT: Any objection to 8 and 9?

4 MR. DREYER: No, your Honor.

5 MS. SCOTT: No, your Honor.

6 MS. LUNKENHEIMER: Okay. Sorry. We went straight
7 to publishing it. I'm sorry.

8 BY MS. LUNKENHEIMER:

9 Q Can you please then describe what this packet relates to?

10 A This particular packet is a consolidation of jobs that
11 were combined to create a new title called "Inspector
12 Operational Support," and these combined in 2009, from a
13 variety of inspector positions that existed in different
14 parts of the factory, most -- most of which were in support
15 areas.

16 Q So, again, if an individual's title is inspector of
17 operational support, they would be expected to be able to
18 perform some, if not all, of the jobs listed and -- and
19 described in this packet?

20 A That is correct.

21 Q Okay. Now, turning back to the union, approximately how
22 -- how much of the Ridley Park, Pennsylvania, work force is a
23 member of the UAW?

24 A Today there are roughly 1900 out of 6100 people at the
25 site.

Bouse - Direct

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1 Q And the UAW workers, do they have -- are they entirely
2 working on production of the manu -- of the helicopters?

3 A Either production or support activities that support
4 production activities.

5 Q Would those be -- well, for just -- briefly examples of
6 what that would mean?

7 A So there are other support functions that maintain
8 equipment, maintain the facilities that are also part of the
9 bargaining unit.

10 Q And, so, when I asked you before whether or not all of
11 the defendants who were charged by the Government were in a
12 position where they either worked on the helicopters or they
13 supported the production of those helicopters, is that what
14 you were referring to --

15 A Yes.

16 Q -- generally?

17 Okay. And, now, the union, does it have special
18 positions that, therefore, bring upon -- change the job
19 responsibilities of an individual while they hold those
20 positions?

21 A Yes.

22 Q Can you describe to the Court what -- is one of those
23 positions a committee man?

24 A Yes, to some degree the committee men, while they may be
25 classified in a specific classification, the vast majority of

Bouse - Direct

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1 their time is spent pursuing contractual issues between the
2 company and the union, resolving grievances, attending to
3 union-type of business.

4 Q So can anybody who's a member of the UAW become a
5 committee man?

6 A If you get elected.

7 Q And they have to get elected by the member -- the other
8 members of the union?

9 A Yes.

10 Q And if they're elected to that position then, they have
11 additional responsibilities besides just their normal job
12 performance?

13 A Yes.

14 Q And, so, as a result, do you in HR, do you track the
15 attendance of your employees?

16 A Yes.

17 Q Do you track any injuries reported or associated with
18 your employees?

19 A Yes.

20 Q And that tracking system, is it altered when someone is
21 elected to be a committee man?

22 A Not really.

23 Q Is it as easy to -- to -- does the individual who becomes
24 a committee man, are they following the same sort of schedule
25 that a normal UAW employee would for you?

Bouse - Direct

24

1 A The vast majority of them are charging to indirect
2 activities, a number of them modify their schedules so they
3 can cross across both first and second shifters, or third and
4 first shift, they spend time traveling between the plant and
5 the union offices, which are off the company's premises.
6 Generally speaking, they do these activities without
7 consulting their management or their other supervisors.

8 Q Okay. So do they have more flexibility than in their
9 schedule and their ability to -- to work certain hours and
10 different times --

11 A Yes --

12 Q -- of the day?

13 A -- their schedule is a lot more flexible than the average
14 person who's doing production work.

15 Q All right. So is it possible to track the attendance
16 schedules -- the attendance record of an individual who's a
17 committee man the same way you would somebody who is not?

18 A It would be significantly more difficult.

19 Q And is it done, generally?

20 A Not to the extent that the production employees there who
21 we know exactly what time they're coming, we know if they
22 have to leave work to make a doctor's appointment, something
23 like that. With a committee man, we don't have that kind of
24 visibility.

25 Q And does a committee man spend the same amount of time

Bouse - Direct

25

1 working on the actual production of the helicopters as an
2 individual who's not an elected committee man?

3 A No.

4 Q Okay. Now, turning to unions.

5 Does the union also have a vice president and a
6 president?

7 A Yes.

8 Q And starting with the vice president, how -- what is --
9 what is generally -- can you describe how that position
10 interacts with -- with the -- your -- your policies and
11 procedures relating to absences and other things?

12 A Generally speaking, the vice president, in a lot of
13 instances, is also -- kind of functions as a committee man.
14 They are not -- they're still on our payroll, so we pay both
15 the committee man and the vice president of the union. They
16 still have a lot of flexibility in setting their schedule,
17 because predominantly their function is to monitor the
18 contract, and resolve grievances associated with that
19 contract.

20 Q Now, what about the union president? Is that a different
21 type of position?

22 A Yes, so the union president is paid by the union. Their
23 benefits are a continuation of their normal benefits and they
24 pay the company in their normal contributions towards those
25 benefits. But their day-to-day activities are directly

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1 related to the union and they go on a leave of absence from
2 the corporation when they take the job as the union
3 president.

4 Q So, in that case, would their absences or injuries not be
5 recorded as the same way that the committee man or just a
6 normal worker?

7 A We track none of their absences as a president. We don't
8 -- they don't record time in our system. For all intents and
9 purposes, they are an employee of the United Auto Workers.

10 Q Now, I want to turn to the -- you mentioned that Boeing
11 has national policies, and I want to focus on the drug and
12 alcohol policies.

13 Is there a national drug and alcohol policy for all
14 of the -- the Boeing plants that manufacture aircraft?

15 A Yes, there is.

16 Q Okay.

17 MS. LUNKENHEIMER: Can you show him HR-5?

18 (Discussion held off the record.)

19 MS. LUNKENHEIMER: Your Honor, can we publish that?

20 THE COURT: That's fine.

21 MS. LUNKENHEIMER: Okay. If there's any objection,
22 I won't.

23 THE COURT: Nobody's objecting. That's fine.

24 Any objection to 5?

25 MR. SCUDERI: No, your Honor.

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1 MR. DREYER: No.

2 MS. SCOTT: No, your Honor.

3 BY MS. LUNKENHEIMER:

4 Q I'm just showing you, Mr. Bouse, what's been marked as
5 HR-5.

6 Can you please describe what that is?

7 A Yes, this was the Drug and Alcohol-Free Work Place
8 Program dated March 29th, 2011.

9 Q Okay. And what does it cover generally?

10 A This covers the drug and alcohol program at the Boeing
11 Company, including what we test for, the responsibilities of
12 the various organizations in administering the program.

13 Q Now, you mentioned that there are sometimes local nuances
14 to policies.

15 Is there a local, meaning a Philadelphia area nuance
16 to the drug and alcohol national policy of the Boeing
17 Company?

18 A Yes, the drug and alcohol policy, the national program is
19 the documents written around the non-represented work force.
20 Any -- any group that is represented, we have an obligation
21 to negotiate terms and conditions with. So there may be some
22 nuances on the drug and alcohol policy by location or by
23 bargaining unit across the Boeing Company.

24 Q Okay. And, I'm sorry, so in this case was -- did the
25 Philadelphia UAW actually bargain for a specific change to

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1 this national policy?

2 A Yes, there are -- there are a couple of small minor
3 changes throughout here.

4 Q And I want to turn your attention to Page 26 of the
5 document.

6 A (Witness complies.)

7 Q Can you describe what that is to the Court?

8 A These were the changes to the policy to specific
9 paragraphs as negotiated between the Boeing Company and the
10 UAW. The most significant difference in this falls under
11 reasonable suspicion, and when we can test for reasonable
12 suspicion.

13 In the -- in the policy for non-represented
14 employees, we can test solely on the basis of the odor of
15 alcohol or drugs, or whether the eyes appear to be red,
16 watery, inflamed or dilated. In our agreement with the UAW,
17 we cannot test solely on the basis of odor, nor can we test
18 solely on the basis of the appearance of the eyes. There has
19 to be another combining factor in order for us to request a
20 reasonable suspicion test.

21 Q So, basically -- and we'll get into a little bit more
22 about reasonable suspicion in a moment -- but basically in
23 order to test the employee who may appear to be intoxicated
24 in some form, nationally you only need one specific factor,
25 and in Philadelphia you need more than one?

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1 A Yes.

2 Q Okay. And is that unique to Philadelphia?

3 A Yes.

4 Q Okay. Now --

5 THE COURT: Do you have a hard copy? Are you going
6 to give me any hard copies of that?

7 MS. LUNKENHEIMER: I was, and I can give them all to
8 you --

9 THE COURT: I just wanted you to give a copy to my
10 law clerk. Can you --

11 MS. LUNKENHEIMER: I was going to do that at the
12 end. Would you like one now, though --

13 THE COURT: Yes --

14 MS. LUNKENHEIMER: -- to be able to reference?

15 THE COURT: -- just the page.

16 COUNSEL: You can have my copy.

17 MS. TAYLOR: No, I'll just give him -- may I
18 approach, your Honor?

19 THE COURT: Oh, sure, because Amy can't see the
20 screen behind her, I just wanted her to have a copy.

21 MS. TAYLOR: Oh, okay.

22 THE COURT: Thanks.

23 MS. TAYLOR: They're not in any particular order.

24 (Discussion held off the record.)

25 BY MS. LUNKENHEIMER:

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1 Q All right. And, so, you were here during testimony that
2 was taken at the first part of this hearing, correct?

3 A Yes.

4 Q And did you hear discussions about the five-panel testing
5 versus a ten-panel testing?

6 A Yes.

7 Q Okay. I want to turn your attention to Page 9 and 10 of
8 this document.

9 A (Witness complies.)

10 Okay.

11 Q Okay. And there does it list the drug testing that is --
12 when -- we're going to go into this later, but just briefly
13 can you tell the Court when individuals are drug tested at --
14 at the Boeing plant?

15 A So we do pre-employment drug testing for all new
16 employees of the corporation. Absent that, and absent
17 requirements for FAA drug testing, or DOT direct testing, we
18 do drug and alcohol testing on the basis of reasonable
19 suspicion and post-accident testing.

20 Q And, so, here on Page 9, going into Page 10, does it list
21 what was being tested for, at least in March 29th of 2011?

22 A Yes, it does.

23 Q And is that typically called the five-panel?

24 A That's what we, within our drug-free work place
25 organization refer to as a five-panel test, yes.

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1 Q Okay. Was that modified recently?

2 A Yes.

3 Q And can you describe how that came about?

4 A So after the arrest of the 30-odd employees in September
5 of 2011, we had ongoing discussions with the UAW leadership
6 about the need to enhance our drug testing in response to --
7 to the arrests and the abuse of what we're referring to as
8 artificial opiates.

9 Q Okay. And, so, in order to accomplish that, what needed
10 to happen?

11 A So a couple of things needed to happen to accomplish
12 that.

13 First, the -- the union had to agree to expand the
14 testing. They also had to get their membership to agree to
15 open the contract in the middle of the term, specifically so
16 that they could negotiate with us for an enhanced drug
17 testing policy, which we wound up referring to it as the
18 expanded ten-panel test.

19 Then we --

20 MR. SCUDERI: Your Honor, I object to this
21 testimony. I don't know how it's relevant about post-arrest
22 change in Boeing --

23 MS. LUNKENHEIMER: Your Honor --

24 MR. SCUDERI: -- contract talks. I don't -- I'm
25 sorry.

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1 MS. LUNKENHEIMER: Your Honor, it has a couple
2 different relevancies.

3 One, the other witness, Robert Fasold was questioned
4 about whether or not tests would show positive for oxycodone
5 and other drugs, and this is responsive to this. This
6 witness is indicating that they wouldn't have in the past,
7 but they will now in the future.

8 And, second of all, we are going to go into some of
9 the different ways in which Boeing HR provided services, and
10 also identified drug abuse by individuals, and the fact that
11 these drugs were not included in -- in some of the earlier
12 methods, does have an impact on whether they were able to
13 detect and provide assistance some -- to some of the
14 defendants in this -- this case.

15 THE COURT: All right. I'll allow it.

16 MS. LUNKENHEIMER: Okay. I'm going to show just
17 briefly HR-16.

18 (Pause.)

19 THE COURT: Can I just ask him a question --

20 MS. LUNKENHEIMER: Yes.

21 THE COURT: -- on that ten-panel thing?

22 Why didn't Boeing, if you knew since '07 or '08,
23 that there was a drug abuse problem, why didn't Boeing
24 negotiate this or take steps to negotiate this stricter
25 drug-testing sooner?

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1 THE WITNESS: So because we do our -- our policies
2 on a national basis, any kind of change that we do into the
3 drug and alcohol policy would have to be negotiated with
4 every one of the unions that in our --

5 THE COURT: Yes, I understand.

6 THE WITNESS: -- in our sphere of employees.

7 THE COURT: Why did you wait four years?

8 THE WITNESS: So we were basically following the
9 accepted drug testing policies that were out there, and that
10 the vast majority of the companies that do drug testing test
11 to. Our tests conform to FAA drug testing policies.

12 THE COURT: That's not what I asked you.

13 THE WITNESS: Okay.

14 THE COURT: Mr. Fasold and Agent Carr both testified
15 to all these problems that were there since when, '07, '08 --

16 THE WITNESS: Yes.

17 THE COURT: -- somewhere in that range?

18 THE WITNESS: The investigation began in '07.

19 THE COURT: Why wait until 2011, to enhance the drug
20 testing policy?

21 THE WITNESS: So at the time of that investigation,
22 I was not aware that investigation was ongoing.

23 THE COURT: Okay. Go ahead.

24 BY MS. LUNKENHEIMER:

25 Q I'll turn your attention to just Page 28 of the exhibit I

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1 just handed you, HR-16.

2 (Discussion held off the record.)

3 MS. LUNKENHEIMER: Okay. It's not going to come up
4 on the big screen, your Honor, but just for the record.

5 BY MS. LUNKENHEIMER:

6 Q What is contained on Page 28 of that exhibit?

7 A It's a listing of the original five drugs that we test
8 for plus an additional nine other artificial opiates.

9 Q Okay. And would that be, even though it doesn't actually
10 list ten, does it list more drugs than ten?

11 A Yes.

12 Q Okay. But is that what we call -- what everybody -- what
13 you're referring to as the expanded ten-panel?

14 A Yes.

15 Q And, so, that is the current testing process in place?

16 A That is now the current policy in place, yes.

17 Q Thank you.

18 MS. LUNKENHEIMER: Can we go back to HR-5?

19 THE COURT: And what drugs do they test for now?

20 MS. LUNKENHEIMER: I'm sorry.

21 BY MS. LUNKENHEIMER:

22 Q Can you please read those drugs?

23 A You would ask me to do that.

24 Q Okay.

25 A So we started with barbiturates, benzopines, methadone,

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methaqualone, propoxyphene (ph), I guess, oxycodone,
hydromorphone, hydrocodone, oxymorphone.

3 Q Okay. And you started with barbiturates because that was
4 the addition.

5 So the original five were the amphetamines, the
6 cocaine, marijuana, opiates, and PCP?

7 A Yes.

8 Q Okay. Turning back to HR-5, the policy that was actually
9 in place in 2011, on March 2011, I just want to focus your
10 attention on the first page, the fourth paragraph, "This
11 procedure does not constitute a contract."

12 Were you present when Mr. Fasold was questioned
13 about whether or not the Boeing Company had the opportunity,
14 under this paragraph, to unilaterally amend or modify or
15 discontinue its drug policies at the Boeing facility in
16 Ridley Park?

17 A Yes.

18 Q And can you explain -- can you answer the question, which
19 was: Does it have that ability?

20 A So we can modify the policy for the non-represented work
21 force at any juncture or any point in time. Any modification
22 of the policy that would then effect a bargaining unit would
23 have to be negotiated individually with each one of those
24 bargaining units.

25 Q And turning to the next paragraph, does that relate to

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1 what you're describing now?

2 A Yes, it does.

3 Q And what does that basically say?

4 A It basically says that the previous statement has no
5 effect, and that the terms of the applicable collective
6 bargaining agreement have precedence over the policy.

7 Q Okay. Now, are you -- is this policy something that's
8 generally distributed to all the UAW members, itself? The
9 policy itself?

10 A No.

11 Q Is there a format that it is distributed to them at least
12 by reference given to them?

13 A Two different formats. All of Boeing's policies and
14 procedures are on a web-based system, accessible by any
15 employee in the corporation.

16 Secondly, the drug and alcohol program, pro 388
17 specifically is called out in an addendum to the contract and
18 it's in the contract book that all employees receive.

19 (Discussion held off the record.)

20 BY MS. LUNKENHEIMER:

21 Q Mr. Bouse, I just placed in front of you exhibit that's
22 been marked on the front HR-7.

23 What is that?

24 A It's the contract that was negotiated in 2009, with an
25 effective date of October 2nd, 2009, between the Boeing

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1 Company and the United Auto Workers and Local 1069.

2 Q And so that contract would -- would have been in place
3 during what period?

4 A 2009 to present.

5 Q Okay. And I just want to turn your attention to what's
6 been marked within that book as HR-6.

7 Can you please describe what that is?

8 A It's a letter of understanding on the Drug and
9 Alcohol-Free Work Place Policy, specifically talking to the
10 exceptions to pro 388, that are contained in pro 320 -- 388
11 as the exceptions for the Philadelphia UAW contract.

12 Q Now, we weren't calling HR-5 pro 388, but was that pro
13 388?

14 A Yes.

15 Q And, so, when you said that one of the ways that all of
16 the United Auto Worker members were informed of the drug
17 policy through the collective bargaining contract that they
18 received, is that what you were talking about?

19 A Yes, it is.

20 Q Okay. Now, how would you generally describe Boeing's
21 policy toward drug and alcohol abuse at the work place?

22 A Our policy is geared towards more rehabilitative in
23 nature. So when we find an instance of drug abuse, either
24 through reasonable suspicion, testing, or post-accident
25 testing, we encourage the employees to seek, if they want to

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1 continue their employment, to seek appropriate treatment
2 through Value Options, a third-party provider of ours, that
3 helps administer, the Drug and Alcohol Rehabilitation
4 Program. People go into that program, they have to sign a
5 conformance notification --

6 Q Well, we'll get into that specifically. I just wanted to
7 get the general philosophy.

8 Is that something -- and you're saying it's a
9 rehabilitative-related --

10 A Yes.

11 Q -- the general philosophy is one of focus on
12 rehabilitation.

13 Is that philosophy and the drug and alcohol abuse
14 practice is something that individuals are notified from the
15 moment they begin employment at Boeing?

16 A Yes.

17 Q Is it something that they're aware -- made aware of
18 before they begin employment at Boeing?

19 A Yes.

20 Q Let's just briefly describe how they first become aware
21 of the drug and alcohol policies at the Boeing Company.

22 A So if we have an opening in the Boeing Company, and
23 somebody's external to us, we post our openings on the Boeing
24 webpage, and people enter into the portal, and can apply for
25 jobs.

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1 In the process of applying for a job, if there's a
2 mutual interest in an applicant, we ask the applicant to
3 complete an application, and on the back side of the
4 application on the very last page is a notation that notifies
5 all prospective employees of the potential for drug and
6 alcohol testing.

7 Q I'm going to show you...

8 (Pause.)

9 Mr. Bouse, I've just placed in front of you what's
10 been marked HR-11.

11 Can you describe what that is to the Court?

12 A Yeah, HR-11 is a synopsis of the entire employee
13 application and offer process. It also includes the
14 employment application, which on the very last page of the
15 employment application, is the acknowledgement, "If required,
16 I agree to submit for tests for illegal drugs and alcohol."

17 There's a copy of an offer letter also within that
18 package that calls out that drug testing is required. It
19 also points out that we have an ethics acknowledgement form,
20 code of conduct is -- is included also. There are electronic
21 links for employees that are -- who are connected
22 electronically to view these documents --

23 THE COURT: I don't know, Ms. Lunkenheimer, if any
24 of this is contested. Maybe...

25 MS. LUNKENHEIMER: No, your Honor. I just want to

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1 make sure, first of all, that it's in the record, and then
2 briefly to have him just describe a couple things that have
3 been put at issue with the general arguments that the
4 Government is making and the defense is making, and that is,
5 is that obviously that drug -- drug and alcohol illegal use
6 and abuse is not tolerated at the Boeing facility. And then
7 moving from that, if there -- and the employees are aware of
8 that from the moment they even begin the application process
9 through their employment.

10 So that's where I'm headed with that.

11 THE COURT: I would suspect --

12 COUNSEL: I'd stipulate to that, your Honor.

13 THE COURT: -- you can get a stipulation on that.

14 MS. LUNKENHEIMER: That's fine, your Honor.

15 And then we'll move this a little bit faster. Then
16 the next thing I want to -- and I did anticipate you might at
17 some point ask for that.

18 THE COURT: I --

19 MS. LUNKENHEIMER: I just want to make sure that the
20 record is clear.

21 Then the other thing that we want to go into is the
22 resources available, some of which I would like to be a
23 little bit more specific about.

24 THE COURT: You can probably lead on that, because I
25 don't think that's going to be contested either.

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1 MS. LUNKENHEIMER: Okay. Thank you, your Honor.

2 THE COURT: Sure.

3 BY MS. LUNKENHEIMER:

4 Q Okay. So, Mr. Bouse, just to be clear, there's a code of
5 conduct.

6 Does that indicate to the employees that -- that
7 drug and alcohol use and abuse on the premises is not
8 tolerated?

9 A Yes.

10 Q And is that something that employees will receive notice
11 of -- you mentioned in the application process -- but when
12 did that -- when did that code of conduct first become
13 written and something that employees were aware of?

14 A So we have a code of conduct certification process on an
15 annual basis that began in 2005, and is an annual requirement
16 as a condition of employment that all employees sign a code
17 of conduct on an annual basis. New employees sign on their
18 first day of employment.

19 Q Okay. And I just want to show you HR-1 and 2, just for
20 the record.

21 (Pause.)

22 Can you tell the Court what those are, please?

23 A Yeah, HR-1 is the Boeing Code of Conduct, and HR-2 is
24 another different version with questions and answers for
25 management and supervision while doing the annual code of

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1 conduct authorization process.

2 Q And those indicate in there that you're not allowed to
3 break the law on the -- on the Boeing Company, the plant,
4 right?

5 A That's correct.

6 Q And has that been true -- for how long has that been true
7 that that -- the code of conduct contain that?

8 A This code of conduct is -- has always had that. Prior to
9 this code of conduct we had standards of behavior and those
10 all contained similar wording about illegal, unethical
11 conduct.

12 Q And when did drugs and alcohol-free environment become
13 more of a specific part of the Boeing policies and practices?

14 A I would say in the late '90s -- late '80s, rather, when
15 we first began pre-employment drug testing.

16 Q And were you present when Mr. Fasold presented to the
17 Court some photographs and some hard copies of different
18 signage related to the drug and alcohol policies and
19 practices at the Boeing Company?

20 A Yes, I was.

21 Q And are those one way that these policies are made known
22 to employees?

23 A Yes, it is.

24 Q Are there other ways that they're made known to
25 employees?

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1 A Yes, during new employee orientation, we cover drug and
2 alcohol policies with all new employees. They're given
3 copies of the Boeing Code of Conduct. They are given
4 extensive explanations of our total access system, which is
5 the employee portal, which gets them into all the policies
6 and procedures, which have direct links to the Employee
7 Assistance Program.

8 Employees who first start employment with us on the
9 first day are given a pamphlet about the Employee Assistance
10 Program, and the various services to include drug and alcohol
11 abuse and counseling that are available to all employees.

12 Q Okay. And, so, we've focused on the policies and
13 practices and the prohibitions against drug and alcohol use
14 and abuse on the facility, and you mentioned, though, that
15 the general philosophy is one of rehabilitation.

16 A That is correct.

17 Q Can you please describe to the Court briefly some of the
18 ways that employees may gain access to assistance if they'd
19 like to rehabilitate themselves from any drug or alcohol
20 abuse issues that they have?

21 A So they're basically two entry points into our drug and
22 alcohol rehabilitation program.

23 The first is driven through either reasonable
24 suspicion, post-accidents, or a discharge and abeyance, which
25 all relate to performance problems on the job that we have

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1 discovered, or they have been -- they have taken a drug test
2 post-accident or reasonable suspicion, and they got a
3 positive result indicating that there were traces of illegal
4 narcotics in their system.

5 In discharge and abeyance, generally speaking, we
6 have a performance issue with an employee, and during the
7 discharge discussion, the employee advises the company that
8 -- that their performance is directly related to a drug or
9 alcohol problem, and that then triggers a discharge and
10 abeyance where we do not discharge until we confirm that the
11 person does, indeed, have a problem related to drug or
12 alcohol. They have an opportunity to get into a
13 rehabilitation program.

14 So we don't proceed with the discharge. We place
15 them on a conformance notification memo. They receive
16 appropriate counseling and treatment, either inpatient,
17 outpatient, through Value Options arranging with the
18 appropriate providers, and in concert with our various health
19 care plans, so that the employee gets the maximum advantage
20 of the health care plan in their treatment.

21 At a point in time when Value Options determines
22 that we can return the employee back to the work place, we
23 are notified that the employee's ready to return to work. As
24 part of that compliance notification process, the employee's
25 required to pass a -- a drug test prior to coming back into

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1 the work place, and then they are subjected to random testing
2 for the next three years. If at any point in time during
3 that three-year period there's a positive drug test result,
4 the employment is terminated with the employee.

5 Q You mentioned a third way?

6 A The --

7 Q Is that post -- you had mentioned before post-accident?

8 A Post-accident. So post-accident -- so if we have a
9 serious accident on site, or a mishap involving an aircraft -
10 - and I'll give you an example -- somebody's towing an
11 airplane and we tow the airplane in and it hits the hangar,
12 the people engaged in that activity -- and that's everything
13 from the tug driver to the wing walkers to the brake rider
14 would all be subjected to a post-accident test to make a
15 determination if drug or alcohol contributed to that
16 incident.

17 Q Okay. So just to -- to summarize. There's a reasonable
18 suspicion testing when someone thinks, under certain
19 appropriate circumstances that someone may be impaired?

20 A Correct.

21 Q Then there's the discharge and abeyance where, if I
22 understand it correctly, someone is about to be terminated
23 for work performance related issues, they raise their hand
24 and say, I have an addiction problem, and then they go into
25 sort of an opportunity for three years to get themselves --

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1 so that they're not discharged, but can continue employment,
2 and that involves drug treatment, drug or alcohol abuse
3 treatment?

4 A Right.

5 Q And then the third is if there's an accident, and I
6 assume if they tested positive, they'll be placed into a
7 similar thing?

8 A Yes, anybody that tests positive in either reasonable
9 suspicion or post-accident are offered the opportunity to go
10 into the conformance notification process, which is the
11 three-year process, and that includes the rehabilitation
12 period and --

13 THE COURT: Is that what they call the Last Chance
14 thing? Is that what they've been talking about?

15 BY MS. LUNKENHEIMER:

16 Q Do they call it that? It's not what you call it, but is
17 --

18 A It's not what we call it. Some people call it the Last
19 Chance.

20 THE COURT: That's what the employees refer to it
21 as?

22 THE WITNESS: Yes.

23 THE COURT: Okay.

24 BY MS. LUNKENHEIMER:

25 Q And, so, it's under those three circumstances it's --

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1 it's relatively the same as the -- they sign the conformance
2 notification memo --

3 MS. LUNKENHEIMER: And I'm just going to -- if the
4 Court would like to see that? It's HR-4.

5 (Pause.)

6 BY MS. LUNKENHEIMER:

7 Q Can you identify HR-4 for the Court?

8 A Yeah, HR-4 is a compliance notification form that the
9 employee has to acknowledge if they want to continue their
10 employment.

11 Q Okay. And, so, during the conformance notification
12 process, is the company aware of whether or not an
13 individual's testing positive for illegal -- for substances
14 that they're not permitted to have?

15 A Yes.

16 Q And is that process generally -- the company is
17 monitoring every stage of that rehabilitation process for the
18 individual?

19 A So during their rehabilitation phase, Value Options, our
20 third-party provider is -- is the one that comes back to us
21 and tells us that the employee has received the appropriate
22 level of care, and that they are ready to return to the work
23 place.

24 Once they're returned to the work place, they are
25 then subjected to random testing no less than six times a

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1 year for three years.

2 Q Okay. Now, you referred to Value Options.

3 Is Value Options a provider that works with your
4 employee -- under your Employee Assistance Program?

5 A Yes.

6 Q Okay.

7 MS. LUNKENHEIMER: Let me show him HR-15?

8 (Pause.)

9 Actually, before I return to HR-15.

10 BY MS. LUNKENHEIMER:

11 Q All of these things that you've described, the discharge
12 and abeyance, the reasonable suspicion, are they all outlined
13 -- and post-accident testing -- are they all laid out in the
14 National Policy, HR-5, that we reviewed earlier?

15 A Yes, they are.

16 Q Okay. And, so, now I want to turn to HR-13 --

17 I'm sorry. Which -- what are the two numbers that I
18 just put in front of you?

19 A HR-13 --

20 SPEAKER: 13 and 14.

21 THE WITNESS: -- employee assistance brochure.

22 BY MS. LUNKENHEIMER:

23 Q Mm-hmm. And the other document?

24 A HR-14 is a -- excerpts of the Employee Assistance
25 Program, and the types of services that are provided from our

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1 weblink.

2 Q Okay. And, so, is there a voluntary and confidential way
3 that employees can get assistance with drug and alcohol abuse
4 issues?

5 A Yes.

6 Q What is that?

7 A The brochure, which is HR-13, specifically states that
8 you can call the Employee Assistance Program for confidential
9 counseling and assistance at any time to an 800 number, where
10 the on-site person is not necessarily engaged, and you'll be
11 contacted with a professional that will do the same types of
12 things with you to help you through your substance or alcohol
13 problem, including directing you to appropriate levels of
14 treatment that are covered under your insurance plans.

15 Q Now, you mentioned that are -- there are on-site people.
16 Can you -- I don't think we have described that to the Court
17 -- separate from the ability to call a 1-800 number to
18 receive confidential assistance, what -- what are you
19 referring to when you refer to on-site people?

20 A So Value Options has an on-site representative in
21 Philadelphia that works with us, and his name is Rich Buxton
22 (ph). He's been at the Philadelphia site for 15 plus years
23 doing Employee Assistance Program work.

24 Q And does the United Auto Workers also have a counselor
25 that can assist with individuals who have to help -- who need

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1 help?

2 A The UAW has -- has a person who's a recovering alcoholic
3 that -- that they use to help encourage people that have drug
4 or alcohol problems to seek help, and they use him as a
5 positive role model, because he has been clean for 25 plus
6 years. So -- and he's very familiar with a lot of the
7 symptoms associated with drug and alcohol, and he encourages
8 people to seek help before they wind up in the conformance
9 notification process.

10 Q So if an individual reaches out to either of the
11 counselors that are on site, or calls through the 1-800
12 number and asks for help, does Boeing know about it?

13 A No.

14 Q Okay. And what happens if they end up needing help?

15 You mentioned that they might go to outpatient or
16 inpatient treatment. Would Boeing be informed of that?

17 A The only thing that Boeing receives is, is that an
18 employee has applied for a medical leave of absence, most
19 likely it's a non-occupational leave, and that they're being
20 placed on leave for a period of time, and that's the extent
21 of the communication that's given to us.

22 Q And then at some point would they -- then would you be
23 notified that they are clear to return to work?

24 A Yes.

25 Q Okay. But the content of that medical treatment that

Bouse - Direct

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1 they are seeking during their absence, would that be known to
2 you?

3 A No.

4 Q And you heard -- you were here present in court the other
5 day when Mr. Sullivan, John Sullivan testified?

6 A Yes.

7 Q Do you remember?

8 And do you remember him saying that he sought
9 voluntarily treatment help through the Employee Assistance
10 Program?

11 A Yes.

12 Q And do you remember that he indicated that he did not get
13 paid when he was in inpatient treatment while -- while under
14 that program?

15 A Yes.

16 Q Now, have -- since that testimony, have you gone and
17 reviewed the files of Mr. Sullivan that relate to that -- any
18 leave of absence he had?

19 A Yes.

20 Q And what did you -- what did you find?

21 A I found two leave of absences for Mr. Sullivan. I then
22 contacted our payroll office to determine whether the leave
23 of absence qualified under our short-term disability plan,
24 and if, indeed, the employee received a disability payment.

25 And in one instance of the leave, I was advised that

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1 he was receiving disability payments, and I believe it was
2 for \$375 a week, and in the other instance, the employee
3 declined to file for the disability leave, therefore, he was
4 in an unpaid status of his own choosing.

5 Q Okay. So when he testified that he -- was he -- are the
6 disability payments made by Boeing itself?

7 A Back in this time frame, they were not.

8 Q Okay. So he was not receiving pay from Boeing, but he
9 was receiving compensation during his absences --

10 A Yes.

11 Q -- during the absence where he actually applied for
12 disability?

13 A Yes.

14 Q Now, in reviewing all those medical records, and other
15 records, did it indicate to you why Mr. Sullivan had been --
16 was on medical leave?

17 A No.

18 Q So other than him testifying in court that he was on
19 leave because he was receiving drug and alcohol treatment,
20 did you have any way of knowing that?

21 A No.

22 Q Okay.

23 THE COURT: How is this confidential thing tying in
24 with that Last Chance agreement? What exhibit was that, 11
25 or 12?

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1 MS. LUNKENHEIMER: No, I thought it was --

2 THE COURT: The contract.

3 MS. LUNKENHEIMER: -- 4. HR-4.

4 COUNSEL: 4 was the notification memo.

5 MS. LUNKENHEIMER: Yes, it's HR-4, your Honor.

6 THE WITNESS: Yeah.

7 THE COURT: How does that figure?

8 THE WITNESS: This does not apply when somebody
9 seeks help on their own through the Employee Assistance
10 Program, because we have no notice, nor we do have any
11 positive test results that somebody has a drug or alcohol
12 problem, so they are not on the conformance notification
13 memo.

14 BY MS. LUNKENHEIMER:

15 Q So just to be clear, if they are -- if they are asked to
16 -- to get testing, because of one of the three things; that's
17 the discharge and abeyance, that is they have an injury or
18 accident, and they have to be tested, or on -- there's
19 reasonable suspicion, then they go through the conformance
20 notification memo process?

21 A That's correct.

22 Q And at that point, during the whole process of their
23 treatments, and their rehabilitation, the company is made
24 aware of exactly the contours of whether they can return to
25 work, whether they're being successful?

Bouse - Direct

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1 A That's correct.

2 Q But if an individual voluntarily seeks out treatment, can
3 they do so in a way that is completely confidential to them?
4 In other words, the Boeing Company does not know what type of
5 medical treatment they are receiving?

6 A That's -- that's what happened. If you go to Value
7 Options, or call the 1-800 number, and enter the program, and
8 claim that you have a drug or alcohol addiction problem and
9 enter that program on your own, outside of intervention
10 directly by the company, we have no knowledge that you're in
11 the program.

12 So you'll go through the complete treatment, as
13 prescribed by Value Options, you'll get released to return to
14 work, and you'll return to work. We will have no knowledge
15 of that unless that employee decided to start telling other
16 employees, or telling his manager. Outside of that, we have
17 no knowledge.

18 THE COURT: As many times as they want?

19 THE WITNESS: Yes, unless -- now, it's possible that
20 somebody could have gone through the voluntary program, got
21 involved in an accident or --

22 THE COURT: No, forget that. I'm talking about a
23 strictly self-initiated call to EAP. I could do that three
24 times a year if I want?

25 THE WITNESS: Yes.

Bouse - Direct

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1 BY MS. LUNKENHEIMER:

2 Q And during that time, would you be able to get paid
3 disability benefits, if you otherwise qualified for them?

4 A Yes.

5 MS. LUNKENHEIMER: I don't have any further
6 questions.

7 MR. SCUDERI: May I, your Honor?

8 THE COURT: Yes.

9 CROSS-EXAMINATION

10 BY MR. SCUDERI:

11 Q Sir, what's your academic background?

12 A I have an Associate's Degree in Aerospace Technology and
13 a Bachelor's in Management with a minor in math.

14 Q Okay. Now, is this a union issue or an employee issue?

15 THE COURT: Which issue?

16 BY MR. SCUDERI:

17 Q Well, you're talking about drug testing, intervention,
18 the EAP Program.

19 Are those programs available just to union employees
20 or non-union employees?

21 A They're available to all employees.

22 Q So it doesn't really matter if I'm a designer or an
23 engineer versus a composite fabricator, whether I take
24 advantage of the EAP Program?

25 A That is correct.

Bouse - Cross

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1 Q So, in theory, I could be somebody who is designing the
2 Osprey, or a Chinook, or working on some kind of system for
3 those vehicles, I could be a heroin addict, and I can
4 voluntarily check myself into that program; is that correct?

5 A That is correct.

6 Q And Boeing will know nothing about it?

7 A That is correct.

8 Q And if the following week I apply to Ratheon for a job,
9 Ratheon will not know about it from Boeing?

10 A That is correct.

11 Q Now, these -- these crashes or problems with the Osprey
12 or the Chinook, has there ever been any suggestion that it
13 was related to a defect by a composite fabricator?

14 A I am unaware of what crashes or whatever it is you're
15 asking me about here.

16 Q Well, how many crashes have there been with the Osprey?

17 A I have no clue.

18 Q You know that there have been some crashes, don't you?

19 A I knew that there was a crash very early on in the
20 program, and outside of that, that's about the extent of my
21 knowledge of an Osprey crash.

22 Q How about Chinook?

23 A I'm sure we have lost helicopters over the -- over the
24 years with --

25 Q Well, you know you've lost --

Bouse - Cross

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1 A -- nearly a thousand --

2 Q -- helicopters; isn't that correct?

3 A I'm sorry?

4 Q You know that you have lost helicopters over the years;
5 is that correct?

6 A I'm sure we have. Yes, sir.

7 Q Have you heard that there have been design defects?

8 MS. LUNKENHEIMER: Your Honor, this is a --

9 THE WITNESS: No.

10 THE COURT: Hold on.

11 MS. LUNKENHEIMER: Your Honor, I just would object.
12 This individual is here to speak about -- he's the Director
13 of Human Resources. To the extent that he's indicated, he
14 does not have a personal familiarity or an employment
15 familiarity with some of the details of crashes and other
16 issues with the -- the helicopters. I think that he's made
17 clear he just doesn't have personal knowledge of that.

18 THE COURT: Well, I'm going to allow it, because you
19 in your response referenced at least one maybe two crashes
20 involving or military personnel killed, and I think it's a
21 fair question to ask if he knows whether that had --

22 MS. LUNKENHEIMER: Okay.

23 THE COURT: -- anything to do with any of these job
24 categories.

25 MS. LUNKENHEIMER: Fine, your Honor.

Bouse - Cross

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1 BY MR. SCUDERI:

2 Q Sir, in connection with your job, have you heard of any
3 crashes, have you heard of any crashes relating to defects in
4 composite fabrication?

5 A I am unaware.

6 Q Okay. Have you heard of any crashes that were possibly
7 due to pilot error?

8 A Once again, I have to say I'm unaware.

9 Q Do you read the newspaper? I'm talking about
10 allegations.

11 A Yes.

12 Q Have you ever heard those allegations?

13 A Every -- virtually every time an airplane goes down, the
14 accusation of pilot error comes into play.

15 Q So you've heard about that?

16 A I've heard of --

17 Q Have you heard about --

18 A -- pilot --

19 Q -- design error with dust storms, brown outs? Have you
20 heard those terms before?

21 A Sure.

22 Q Okay. So you have heard some terms?

23 A Yes.

24 Q Okay. Have you ever heard any suggestion that the errors
25 of the crashes were caused by people who did their jobs?

Bouse - Cross

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1 A No.

2 Q Okay. Now, were you the person responsible for
3 generating the paperwork related to these employees?

4 A I don't know what paperwork that is.

5 Q Okay. I'm going to show you.

6 MR. SCUDERI: Let me mark this Phillip 1.

7 MS. LUNKENHEIMER: Okay.

8 BY MR. SCUDERI:

9 Q Sir, can you identify these papers?

10 (Pause.)

11 A This would be a -- a printout of an employee's work
12 history with the Boeing Company.

13 Q What's the name of the employee?

14 A Victor Phillip.

15 Q Victor Phillip.

16 And do you recognize Victor Phillip as sitting right
17 here?

18 A No, sir.

19 Q Can you tell me how many pages there are in that
20 document?

21 A Without counting them, no.

22 Q About a hundred? 92?

23 A Your guess is as good as mine.

24 Q Do you know what a corrective action report is?

25 A Yes.

Bouse - Cross

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1 Q What is it? Tell the Court.

2 A A corrective action report is a written document that
3 talks about corrective action that was issued to a specific
4 employee.

5 Q Does that mean that a specific employee did something
6 wrong?

7 A That an employee was engaged in an activity that either
8 violated company policy intentionally, was involved in some
9 defective work, could be any number of things.

10 Q Could be like a write-up; is that correct?

11 A Sure, exactly.

12 Q Now, from looking at that document, can you tell for how
13 long Victor Phillip has worked for Boeing?

14 A Approximately 25 years.

15 Q And from looking at that document, can you tell us if
16 there was one CAR in that report?

17 A In these documents?

18 Q Yes.

19 A Probably not, because the corrective actions get pulled
20 from the system in terms -- under the terms of the collective
21 bargaining agreement after ten months.

22 So the likelihood that I would find a corrective
23 action in the employee's work history file are very remote.

24 Q Well, don't you think that it's important that Boeing, as
25 an employer of all these employees, knows whether an employee

Bouse - Cross

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1 has done a good job in the last 25 years?

2 A Sure.

3 Q But you're saying that it's not in the collective
4 bargaining agreement?

5 A I'm sorry. I don't understand.

6 Q You're saying under the collective bargaining agreement
7 that Boeing has to redact those comments?

8 A That a corrective action memo is not part of an
9 employee's file after ten months is the terms that were
10 negotiated in the collective bargaining agreement.

11 Q How about for non-union employees?

12 A Non-union employees, we, depending upon the type of
13 corrective action, some corrective actions stay there
14 forever, if they're like any EEO violation.

15 Q All right. Now, I'm going to show you a series of
16 documents.

17 (Discussion held off the record.)

18 MS. TAYLOR: Counsel, what are they, Phillip 2?

19 MR. SCUDERI: Yes.

20 Your Honor, I'm going to hand the witness a series
21 of documents which are labeled Phillip 2, which I've shown
22 the Government.

23 BY MR. SCUDERI:

24 Q And ask the witness, if you recognize those? Can you
25 look at those documents and tell me what they are?

Bouse - Cross

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1 A These are documents that attest to recognition that we
2 give to employees for doing good jobs. So these are --

3 Q And could you look at that last document and tell me what
4 it says? Whose name is on that document?

5 A The -- oh, you mean the -- the awarded?

6 Q Yes, who was awarded that document?

7 A Victor Phillip.

8 Q And what was he awarded for?

9 A The very last one?

10 Q Yes.

11 A In appreciation for the employee's observing a possible
12 catastrophic defect and the dedication and integrity and
13 working to correct it.

14 Q Okay. Now, is there -- is there anything on the front of
15 his employment file --

16 THE COURT: When was that?

17 THE WITNESS: This was dated May 22nd, 2002.

18 BY MR. SCUDERI:

19 Q And they're also other awards, are there not?

20 A Yes.

21 Q But, in fact, every piece of paper there is an award for
22 something?

23 A Yes.

24 Q Is it something to do with -- could you give us the
25 general description?

Bouse - Cross

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1 A Usually related to good performance, doing a good job,
2 stepping up, taking care of an issue.

3 Q Now, is there anything in his employment file which
4 reflects those awards?

5 THE COURT: You mean in Exhibit 1?

6 MR. SCUDERI: Yes.

7 THE WITNESS: I'm going to have to go back in here
8 and look.

9 (Pause.)

10 They are not typically items that are kept in the
11 employee file.

12 BY MR. SCUDERI:

13 Q Okay. Now, let me just ask you a few questions:

14 Under the collective bargaining agreement -- well,
15 let me strike that.

16 In 2007, you said that you did not move, or Boeing
17 as a company, did not move to amend its collective bargaining
18 agreement as you had in 2011, as far as the drugs tested; is
19 that correct?

20 A In 2007?

21 Q I think the Judge asked you a question, Why you didn't
22 move to change your drug policy as far as the kinds of drugs
23 tested until 2011; is that correct?

24 A Yes.

25 Q And I believe your answer was that you were not aware of

Bouse - Cross

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1 the investigation in 2007?

2 A That's correct.

3 Q Okay. In 2007, were you aware that there was a drug
4 problem at Boeing?

5 A The only, as far as my knowledge of drug issues on Boeing
6 property, would have been related towards illegal narcotics,
7 and in 2007, I was in San Antonio, Texas.

8 THE COURT: So you weren't working in Philadelphia?

9 THE WITNESS: No.

10 MR. SCUDERI: All right.

11 THE COURT: Or Ridley, I guess.

12 MR. SCUDERI: Okay.

13 THE WITNESS: Right.

14 BY MR. SCUDERI:

15 Q About nation-wide, were you aware of a drug problem?

16 A Nothing more than what you'd find in the normal work
17 place that's out there.

18 Q Okay. Because there -- can we say generally that the
19 normal work place has a drug problem --

20 A I would --

21 Q -- and these issues are not isolated to Boeing?

22 A Yes.

23 Q And you also know, based on your data, that this is not a
24 union worker versus a non-union worker problem; isn't that
25 correct?

Bouse - Cross

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1 A Yes.

2 Q Because you actually generate reports about who avails
3 themselves of the EAP services; isn't that correct?

4 A The Employee Assistance Program, Value Options, generates
5 a series of reports that they provide to us that tell us the
6 nature of services that they're providing, so that we get a
7 broad understanding as to the types of issues that are out
8 there with the work force.

9 Q Okay. And you're not suggesting that only people -- that
10 the only people who are doing drugs at Boeing are the ones
11 who avail themselves of this program --

12 A No.

13 Q -- is that correct?

14 A No.

15 Q Because there are also people who voluntarily take care
16 of their problems by themselves, correct?

17 A That's correct.

18 Q And according to your information, which you disseminate
19 in the work place, you encourage other people who are
20 embarrassed to say they have a problem; isn't that correct?

21 A I'm sorry. Could you restate that?

22 Q I think you were here for the earlier testimony, there
23 was discussion about literature, which was posted around the
24 plant --

25 A Yes.

Bouse - Cross

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1 Q -- about how, if you have a problem, you can call
2 confidentially?

3 A Yes.

4 Q You know that not every person calls confidentially;
5 isn't that correct?

6 A That's true.

7 Q And that some people have problems for years and they
8 don't call. So the data which you have about the utilization
9 of the EAP is limited to quote, "only those people who
10 utilize the EAP" --

11 A That is correct.

12 Q -- isn't that correct?

13 And at the Boeing plant at Ridley, there are 6100
14 workers?

15 A That's correct.

16 Q And only 1900 are union?

17 A That's correct.

18 Q And yet the same percentage of non-union workers use the
19 EAP as union workers?

20 A You've got --

21 Q Roughly?

22 A -- you have the statistical analysis --

23 Q Right here?

24 A Yeah.

25 Q And a lot of those people are professionals; is that

Bouse - Cross

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1 correct?

2 A Sure.

3 Q And those professionals are the ones who are making
4 budget decisions and design decisions for Boeing?

5 A Yes.

6 Q And those decisions are affecting the military and
7 military helicopters; is that correct?

8 A Sure.

9 Q Okay.

10 MR. SCUDERI: I have no further questions, your
11 Honor.

12 THE COURT: All right. We'll go down the row.

13 Go ahead, Ms. Scott.

14 MS. SCOTT: Thank you, your Honor.

15 Mr. McGovern, I see you're here. You don't want to
16 ask any questions today?

17 MR. McGOVERN: No, I have no questions. Thank you,
18 your Honor --

19 THE COURT: All right.

20 MR. McGOVERN: -- for the opportunity.

21 THE COURT: Sure.

22 MR. McGOVERN: It's nice to see you.

23 THE COURT: You, too.

24 CROSS-EXAMINATION

25 BY MS. SCOTT:

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1 Q Good afternoon, sir.

2 Sir, you just indicated that Value Options generates
3 a report that's given to Boeing indicating who's taking
4 advantage of the EAP; is that right?

5 A Not -- not by name. We get a -- a synopsis of types of
6 claims, and the reasons why people go to Value Options, and
7 it's more of a report card to -- to demonstrate the value
8 that they're creating for the Boeing Company, and that
9 they're trying to work with our work force on issues that are
10 important to them.

11 Q So it gives you -- it itemizes at least the number of
12 people who is -- who are using EAP, right?

13 A Yes.

14 Q Does it differentiate between the various positions at
15 Boeing and how many in each position is using EAP?

16 A No, it's much more at a higher level, so it -- it won't
17 get down to say three design engineers came in, or six
18 composite fabricators came in. It doesn't get down to that.

19 Q Okay. In your capacity as the Human Resources Department
20 Director, you are familiar, though, with the various
21 individuals at Boeing, and who have had problems in terms of
22 drug or alcohol problems; is that fair to say?

23 A When you say I'm familiar with --

24 Q Do you, at some point, generally become aware?

25 A I am aware if we have an issue that results in a

Bouse - Cross

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1 conformance notification memo, yes.

2 Q Okay. And would you be notified of each accident that
3 occurs at the plant?

4 A A vast majority, not every accident that occurs on the
5 plant. That's, you know, it depends upon how you want to
6 classify an accident.

7 Do you want to classify an accident as a recordable
8 accident? Then, no.

9 Q Well, what about -- what about an accident that results
10 in a drug test?

11 A Those I'm generally made aware of, yes.

12 Q You're also told of anyone whose drug test, that as a
13 result of reasonable suspicion by management; is that right?

14 A Generally, probably only when there's a positive result
15 on those.

16 Q Okay. Would you also be told -- certainly you'd be told
17 of people who are being discharged from Boeing; is that
18 right?

19 A Yes.

20 Q And it's fair to say that my client, James Swan, was
21 never brought to your attention because he was, in fact,
22 involved in some sort of work-related accident; is that
23 right?

24 A I would have to say so without looking at his record.

25 Q Okay. Well, would you like to look at his record?

Bouse - Cross

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1 Would that help you?

2 A It might.

3 Q Okay.

4 MS. SCOTT: If I may, your Honor?

5 THE COURT: Sure.

6 (Pause.)

7 May I approach, your Honor?

8 THE COURT: Of course. You don't have to ask.

9 (Pause.)

10 BY MS. SCOTT:

11 Q Sir, I'm showing you what I will identify as Swan 1.

12 A Okay.

13 Q Did you prepare that?

14 A No, I didn't.

15 Q Compile those? Okay.

16 A I did not.

17 Q Are you familiar with the documentation in that, what
18 I've identified as Swan 1?

19 A I'm familiar with the work histories, the employment app.
20 This basically is the employment file and what they have
21 charged to over their --

22 Q Okay.

23 A -- period of time.

24 Q So that's something that would be kept by your office, I
25 presume; is that right?

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1 A It's -- they're all electronic files. We do not maintain
2 the employee files, per se. They're maintained at --

3 Q Okay.

4 A -- a different location for everybody in the corporation.

5 So if you were to ask me if somebody had an
6 accident, from this file, the only way that I could determine
7 that would be is if under the action and comments on the work
8 history, there was a potential notation that they went out on
9 an occupational-related leave.

10 Q Okay.

11 A Now, that could be -- for an accident it could be for
12 carpal tunnel surgery.

13 Q Okay.

14 A The exact nature I wouldn't know.

15 Q So, as far as you know, you're not aware of Mr. Swan
16 having any sort of accident-related drug or alcohol use at
17 the Boeing plant?

18 A That's true.

19 Q And you're also not aware of any times that he was --
20 that there was reasonable suspicion by management to actually
21 drug test him; is that fair to say?

22 A That is fair to say.

23 Q And, as far as you know, he also is not slated to be
24 discharged from Boeing prior to, of course, his arrest in
25 this matter?

1 A That's correct.

2 THE COURT: Have you reviewed the files of all the
3 employees who were seeking 3607 relief, special probation?

4 THE WITNESS: This is the first time I'm seeing the
5 files in detail of --

6 THE COURT: Well, has somebody at Boeing looked at
7 their files to determine if there was any drug or
8 alcohol-related accidents, or maybe they were disciplined, or
9 scheduled for discharge? Any of the people that are seeking
10 this relief? I think there's about 12 Ms. Lunkenheimer said.

11 MS. LUNKENHEIMER: 13, your Honor.

12 THE COURT: 13.

13 THE WITNESS: So several of the -- those arrested
14 out of the original 35 were on conformance notification
15 memos, existing memos. Two had been discharged for --

16 THE COURT: Do you know who these people are? Do
17 you have the names off the top of your head or can you reach
18 an agreement on that, Ms. Lunkenheimer?

19 MS. LUNKENHEIMER: We can reach an agreement on some
20 of those.

21 (Discussion held off the record.)

22 MS. LUNKENHEIMER: No, they're not going to be here.

23 COUNSEL: They're not here.

24 THE COURT: No, I know whether --

25 MS. LUNKENHEIMER: The two that --

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1 THE COURT: -- they're not here or not, but are they
2 people who are seeking --

3 MS. LUNKENHEIMER: I don't know that --

4 THE COURT: -- this relief?

5 COUNSEL: No.

6 MS. LUNKENHEIMER: No, your Honor, and I --

7 (Discussion off the record.)

8 THE COURT: Because there are some people who are
9 seeking 3607 relief that aren't here today, but they're going
10 to get a copy of this transcript, so I want to --

11 MS. LUNKENHEIMER: I'm sorry, your Honor. There is
12 one individual who is seeking relief. I believe George
13 Torres was either discharged or certainly on a conformance
14 notification memo.

15 THE COURT: For substance abuse?

16 MS. LUNKENHEIMER: For substance abuse related --

17 COUNSEL: Yes.

18 THE COURT: Torres?

19 MS. LUNKENHEIMER: Yes --

20 THE COURT: Okay.

21 MS. LUNKENHEIMER: -- Torres, and I don't know if --
22 I just don't know. I don't know of positively that any of
23 the other individuals were, but I also can't completely rule
24 that out.

25 THE COURT: Okay.

Bouse - Cross

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1 MS. LUNKENHEIMER: We can make that determination,
2 your Honor.

3 THE COURT: Okay.

4 MR. SCUDERI: Your Honor, I'm here for Mr. Torres
5 today who's not here. I agree that whatever they produce is
6 fine.

7 THE COURT: Okay. Great. Thank you.

8 Sorry to interrupt you, Ms. Scott.

9 MS. SCOTT: No problem, your Honor.

10 BY MS. SCOTT:

11 Q Sir, you mentioned that Mr. Sullivan, who testified a
12 couple of weeks ago, had gone out on a medical -- medical
13 leave, right?

14 A That's what he testified to, yes.

15 Q And that --

16 A I was verified that he was on a leave of absence.

17 Q -- you actually went back and looked at his records and
18 determined that he had, in fact, received some short-term
19 disability?

20 A Yes.

21 Q Is short-term disability voluntary at Boeing or is that
22 something that's given to all employees as part of their
23 employee benefit package?

24 A It's part of the employee benefit package. Short-term
25 disability is a provided benefit to the United Auto Workers

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1 as well as to the salaried work force.

2 Whether you use that benefit or not is an individual
3 decision as to your triggering that benefit through our
4 benefits provider.

5 Q Okay. So it is actually offered and paid for by Boeing
6 --

7 A That's correct.

8 Q -- is that right?

9 (Pause.)

10 MS. SCOTT: I have no further questions. Thank you,
11 sir.

12 THE COURT: All right.

13 MS. SCOTT: May I approach, your Honor --

14 THE COURT: Oh, sure.

15 MS. SCOTT: -- so I can take back the exhibit?

16 MR. DREYER: No questions, your Honor.

17 THE COURT: All right. Mr. Laigaie?

18 MR. LAIGAIE: Thank you, your Honor.

19 CROSS-EXAMINATION

20 BY MR. LAIGAIE:

21 Q Good afternoon, sir.

22 A Good afternoon.

23 Q I'll try not to tread over the same ground we've been
24 over.

25 Have you reviewed -- I represent Mike Homer who

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1 worked at Boeing for 23 years. He's present today in court.

2 Mike, stand up for a second?

3 (Mr. Homer stands.)

4 You don't know Mr. Homer, do you?

5 A No, I do not.

6 Q Did you review his employment record to prepare for
7 today's testimony?

8 A No.

9 Q Okay. And have you prepared -- have you reviewed his
10 employment record at any time prior to today's proceeding?

11 A Only to the extent when we were looking at some absence
12 data and recordable accidents, where we pulled data from
13 other sources, because our accident database is not part of
14 the HR database, it's part of our SHEA (ph) --

15 Q I see. And we were produced today by the Government an
16 analysis of accidents and vacation time, which I think you
17 might be speaking to.

18 Is this something that -- that you were assisting
19 Mr. Opey (ph) putting together a schedule?

20 A We were providing him some data, so that he could put
21 together some charts for his testimony.

22 Q Okay. So the extent you were looking at some data
23 related to Mike Homer, you were also looking at the same data
24 as it related to all the other defendants, correct?

25 A Correct.

Bouse - Cross

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1 Q Okay. Now, without belaboring the point too much, Boeing
2 disciplines employees that don't act correctly, right?

3 A Yes.

4 Q And it awards employees who do a good job, correct?

5 A True, and the two aren't necessarily mutually exclusive.

6 Q I understand.

7 Now, are you aware that in 23 years of service, Mr.
8 Homer has never received any form of written discipline?

9 A I have no knowledge of that.

10 Q And are you aware that in 23 years of service,
11 conversely, Mr. Homer has received, by my count, 13 different
12 types of meritorious service awards?

13 A Once again, I don't have specific knowledge of that.

14 THE COURT: Can you stipulate to that, Ms.
15 Lunkenheimer or are you going to contest that?

16 MS. TAYLOR: We -- we -- I'm sorry, you didn't say
17 me.

18 THE COURT: Sorry, Ms. Taylor.

19 (Discussion held off the record.)

20 MS. LUNKENHEIMER: Yes, we haven't seen that. It
21 may be true, but I'd be basing it only on Mr. Laigaie's
22 representation.

23 THE COURT: Is it pretty easy to check based on the
24 file?

25 MR. LAIGAIE: Well --

Bouse - Cross

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1 THE COURT: Where did that come from?

2 MR. LAIGAIE: -- your Honor, I have here the
3 certificate --

4 THE COURT: Why don't you show them the --

5 MR. LAIGAIE: -- which I have attached to the motion
6 which I filed with the Court --

7 THE COURT: Right.

8 MR. LAIGAIE: -- last week and provided a copy to
9 the Government.

10 I'll be glad to show them to this witness, although
11 I think he's going to say I've never seen them before.

12 MS. LUNKENHEIMER: Your Honor, I mean we did not
13 prepare this specific testimony related to Mr. Homer today.
14 This is supposed to be the general testimony about the
15 policies and practices at Boeing that relate generally to all
16 of the defendants seeking this relief, so we're not prepared
17 to respond to that either.

18 THE COURT: All right.

19 MS. LUNKENHEIMER: I mean there is some specific
20 information about Mr. Homer that actually we would present to
21 respond to that type of information that this witness
22 actually might even be aware of, but we didn't prepare it
23 that way. That would be -- it would be -- I would be
24 uncomfortable having a conversation that there's positive
25 information presented when we can't present the whole picture

1 today on Mr. Homer.

2 THE COURT: So when do you want to do that, the day
3 of sentencing?

4 MS. LUNKENHEIMER: I believe that we agreed to do
5 that at the time of sentencing.

6 THE COURT: Is that okay with you?

7 MR. LAIGAIE: Yes, your Honor.

8 THE COURT: While he's here, you can ask him what he
9 knows, if you want to, just so we --

10 MR. LAIGAIE: Right, that's what --

11 THE COURT: -- don't have to recall him at
12 sentencing.

13 MR. LAIGAIE: -- that's what I was going to say.

14 Since he's testified he hasn't reviewed the files,
15 since he's not familiar with these awards or certificates, I
16 think it would be wasting everybody's time to go through them
17 one at a time here today.

18 I did expect though, however, that we were going to
19 go through Mr. Homer's specific testimony today, but Mr. Lunk
20 -- I was made aware Friday afternoon in a call that that
21 wasn't on the agenda for today.

22 THE COURT: Okay.

23 BY MR. LAIGAIE:

24 Q Now --

25 THE COURT: I guess we'll do that the day of

Bouse - Cross

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1 sentencing, unless somebody wants to do it earlier.

2 MS. LUNKENHEIMER: Your Honor, I mean that was our
3 understanding from the Court that --

4 THE COURT: Yes.

5 MS. LUNKENHEIMER: -- was our understanding at the
6 time of the change of plea and that was --

7 THE COURT: Well, I was trying to --

8 MS. LUNKENHEIMER: -- and --

9 THE COURT: -- accommodate all the people who
10 couldn't come, and weren't ready, and --

11 MS. LUNKENHEIMER: Right, I mean we were not going
12 to use this witness to present Mr. Homer-related specific
13 testimony. If he wants to ask him if he knows anything about
14 Mr. Homer --

15 THE COURT: Yes.

16 MS. LUNKENHEIMER: -- he's welcome to do that.

17 THE COURT: All right. Go ahead.

18 MR. LAIGAIE: Thank you, your Honor.

19 BY MR. LAIGAIE:

20 Q Now, we talked about the -- you talked some about the
21 difference between a five-drug panel and a ten-drug panel.

22 Do you recall that testimony?

23 A Yes.

24 Q Irrespective of whether someone who's being tested under
25 a five-drug panel or a ten-drug panel, the fact of the matter

Bouse - Cross

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1 is, if someone acts suspiciously in the work force, and is
2 observed as such, they will be tested for drug use, correct?

3 A Provided they meet the criteria for screening which, you
4 know, are they exhibiting certain behaviors, and the reason
5 beyond reasonable suspicion testing, first of all, is to get
6 somebody into medical, because there are a lot of reasons why
7 they could be acting that way that aren't related to drug
8 abuse. They could need medical assistance, and that's one of
9 the reasons why we're bringing -- they get tested through the
10 medical department, so they can make an evaluation that if it
11 isn't potentially related to this, it could be related to a
12 diabetic situation, or any -- any other number of factors.

13 Q Sure. Well, I think we agree here, if someone acts in a
14 way that meets the criteria of reasonable suspicion under pro
15 388, they will be -- they will be assessed whether there's a
16 medical condition or whether they should be tested for drug
17 abuse, correct?

18 A Correct.

19 Q And are you aware that in 23 years of service, Mr. Homer
20 has never been referred for any drug testing under pro 388?

21 A I have no knowledge of that.

22 (Pause.)

23 Q And, oh, by the way, is that something you could look at
24 in an employment record and necessarily determine?

25 A It would not be in any kind of employment record, as far

Bouse - Cross

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1 as the number of times that somebody may have gone in for
2 reasonable suspicion testing.

3 Q Okay.

4 A That is part of our drug-free work place organization and
5 they maintain those records, so they maintain
6 confidentiality.

7 Q So referrals for reasonable suspicion testing wouldn't
8 necessarily reach an employee's permanent record.

9 What about positive test results? Would that reach
10 the employee's records?

11 A So positive test results result in their record through
12 the form of the conformance notification memo for a drug-free
13 work place focal who is an HR member.

14 Q Okay. And just -- just so I'm clear -- I'm less
15 familiar, obviously, with these policies than you are -- if I
16 test positive and there's a performance notification, that
17 then becomes a part of my permanent record?

18 A It becomes part of your record, yes.

19 Q And would be, presumably, in one of -- in Mr. Homer's
20 file?

21 A I would believe so.

22 Q Similarly, if he were tested because of post-accident, I
23 think is the phrase we're using, if he was tested
24 post-accident, and it came back verified or confirmed drug or
25 alcohol abuse, that's also something that would end up in his

Bouse - Cross

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1 permanent record, correct?

2 A The only piece that would be part of the record would be
3 the conformance notification memo. Any -- whatever the test
4 results were that's maintained by the drug-free work place
5 group, which is part of our medical group, that restricts
6 that information.

7 Q Okay. Well, I just want to make sure the record's clear.
8 If he tested positive post-accident, and there were a CNM, a
9 conformance notification memo -- I'm never going to get that
10 right, I apologize -- that would be in his record?

11 A I believe so, yes.

12 Q Okay.

13 (Discussion held off the record.)

14 BY MR. LAIGAIE:

15 Q You don't know anything about Mr. Homer's medical
16 history, do you?

17 A No.

18 Q And you don't know anything about why he may or may not
19 have been using oxycodone in and around the time he was
20 arrested, do you?

21 A I have no knowledge.

22 MR. LAIGAIE: That's all the questions I have, your
23 Honor.

24 THE COURT: All right. Thank you.

25 Mr. O'Meara, anything?

Bouse - Cross

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1 MR. O'MEARA: No, thank you, your Honor. I have no
2 questions.

3 THE COURT: All right.

4 Anything else, Ms. Lunkenheimer?

5 MS. LUNKENHEIMER: No, your Honor.

6 THE COURT: Thank you, sir.

7 THE WITNESS: Thank you.

8 (Witness excused.)

9 MS. LUNKENHEIMER: Your Honor, the Government would
10 call Special Agent Raymond Carr back to the stand.

11 RAYMOND CARR, after having been previously duly
12 sworn as a witness, was examined and testified further as
13 follows:

14 MS. LUNKENHEIMER: Your Honor, if I may have a
15 moment?

16 THE COURT: Sure.

17 (Discussion held off the record.)

18 MS. LUNKENHEIMER: Your Honor, I'm trying to learn
19 from past practice, and I think that some of -- most of what
20 Mr. -- Special Agent Carr was going to put in today can be
21 done by stipulation. Defense counsel appears to agree. So
22 I'll just briefly describe that, so that the Court can
23 determine whether they're in agreement.

24 THE COURT: All right.

25 MS. LUNKENHEIMER: Agent Carr was going to testify

1 that he is familiar with the Osprey and the Chinook
2 manufacturing process, both by spending extensive amounts of
3 time at the manufacturing plant, as well as even observing a
4 test flight of one of those two helicopters.

5 And then he has done a search of the public record
6 for public documents and photographs and videos that would
7 show and describe the use of these two helicopters currently.
8 And, so, we were going to put some of those public records in
9 through him. They are -- they have been marked, and I'd like
10 to just very quickly do that with no objection from defense
11 counsel.

12 THE COURT: Sure.

13 MS. LUNKENHEIMER: Okay.

DIRECT EXAMINATION

15 BY MS. LUNKENHEIMER:

16 Q I'm just going to hand you...

17 A Thanks.

18 Q Agent Carr, I've just handed you exhibits that have been
19 marked --

20 MS. LUNKENHEIMER: Just a moment.

21 COUNSEL: What, these?

22 BY MS. LUNKENHEIMER:

23 Q Well, they've been marked as Carr 1 through 8, and then
24 Carr 10 through 13, I believe.

25 A Okay.

Carr - Direct

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1 Q Are these documents that you're familiar with?

2 A Yes.

3 Q Are these documents that can be obtained that describe
4 the Chinook and Osprey Helicopters in the public domain?

5 A Yes.

6 Q In other words, are these documents that are available on
7 the internet?

8 A They are.

9 Q And Carr Exhibit 1, is that a document that describes the
10 V-22 Osprey?

11 A It is.

12 Q Documents 2 and 3 describe various models of the Chinook?

13 A It is.

14 Q And are you familiar with whether these are describing
15 the Chinooks and the Ospreys that are being manufactured at
16 the Boeing Ridley Park facility?

17 A They are.

18 Q Okay. Then is there a selection here of photographs of
19 the Osprey and the Chinook in active use currently?

20 A Yes.

21 Q And, so, Carr 4, 5 -- sorry, I'll go a little slower --
22 4, 5, 6, 7 and 8, what are those photographs depicting?

23 A Photographs of the V-22 Osprey model.

24 Q In current use?

25 A Yes.

Carr - Direct

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1 Q Some of those in use at -- are those photographs used by
2 the military?

3 A Yes.

4 Q Okay.

5 MS. LUNKENHEIMER: And then, your Honor, we have a
6 brief video -- defense counsel has not had an opportunity to
7 see this -- of the Osprey in -- in action.

8 Would I be able to present this? If you have any
9 objections, can you hold them until afterwards?

10 COUNSEL: Certainly.

11 MS. LUNKENHEIMER: Could you please play Carr
12 Exhibit 9?

13 (The video was played at this time.)

14 BY MS. LUNKENHEIMER:

15 Q Agent Carr, is that video simply a depiction of some of
16 the active uses that the -- the Osprey is made to -- some of
17 the uses that the military would make of the Osprey
18 currently?

19 A Yes, uses and capabilities of that machine.

20 Q Again, I just want to turn to Carr Exhibit 10, 11, 12,
21 and 13.

22 What are those photos depicting?

23 A Of the Chinook CH-47, manufactured at Boeing.

24 Q And, again, are those depictions of the active use of the
25 Chinook manufactured at the Ridley Park facility?

Carr - Direct

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1 A Yes.

2 Q And is there also a video that was selected that's marked
3 as Carr Exhibit 14 that depicts that helicopter in active
4 use?

5 A There is.

6 MS. LUNKENHEIMER: Can I briefly show that to the
7 Court?

8 (The video was played at this time.)

9 BY MS. LUNKENHEIMER:

10 Q And in the video -- that video that's been marked Carr 14
11 when it's viewed on the internet, does it indicate the
12 country that those troops are acting in?

13 A Yes.

14 Q What is it in?

15 A Afghanistan.

16 Q Thank you.

17 Agent Carr, when you began this investigation, you
18 testified earlier about that beginning in 2007?

19 A Correct.

20 Q Was there a certain requests that you made of employees
21 at the Boeing company about the secrecy of -- the need for
22 secrecy of that investigation?

23 A Yes.

24 Q And can you, please, just briefly describe what you
25 instructed the -- was it -- sorry.

Carr - Direct

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1 Did you inform only a limited number of Boeing
2 employees about the investigation as it was being conducted?

3 A The only employee at the Philadelphia plant was Mr.
4 Fasold, other than a few people in Chicago.

5 Q And was there investigation specific reasons that you
6 limited the knowledge of your investigation?

7 A For the integrity of the investigation, yes.

8 | Q Okay.

9 MS. LUNKENHEIMER: I have no further questions of
10 Agent Carr.

11 MR. SCUDERI: May I, your Honor --

12 THE COURT: Yes, sure.

13 MR. SCUDERI: -- a few questions?

CROSS-EXAMINATION

15 BY MR. SCUDERI:

16 Q Agent, how long have you been an agent for the F.B.I.?

17 A Close to 24 years.

18 Q Okay. And you've handled many, many drug investigations;
19 isn't that correct?

20 A Yes.

21 Q Have you ever been involved in the charging of
22 individuals with misdemeanor drug offenses before?

23 A No.

24 Q So this is the first time ever -- these people here --
25 first time ever misdemeanor drug offense; is that correct?

Carr - Cross

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1 A Correct.

2 Q Okay. Now, you said you started working on -- on the
3 case in 2007 or 2008?

4 A October 2007, is when --

5 Q Okay.

6 A -- we sat down.

7 Q Didn't Boeing conduct an internal investigation before
8 that?

9 A You'd have to ask Boeing that.

10 Q Okay. How were you contacted to investigate Boeing at
11 Ridley Park?

12 A The Department of Defense.

13 Q Okay. Now, we saw a lot of exhibits from you, and we saw
14 video from you.

15 Is there any connection between any problem with the
16 integrity of the V-22 Osprey or the Chinook and these
17 defendants?

18 A I have no direct knowledge of any of that.

19 Q Okay. I believe that U.S. Attorney Zane Memeger said the
20 authorities were not aware of any accidents or problems
21 involving aircraft that he accused employees worked on at the
22 Ridley Park plant.

23 Do you know if that's true or not?

24 A You'd have to ask Mr. Memeger about that.

25 Q Okay. Now, in doing your research on this case, I assume

Carr - Cross

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1 you know that the Osprey has had at least four failures
2 during flight testing, one combat zone crash, and a number of
3 minor incidents; is that correct?

4 A I don't have any direct knowledge as to the accidents
5 that have occurred, other than what's in the news.

6 Q Okay. But have you, in searching the archives, did you
7 see any reports about helicopter crashes?

8 A I did not look specifically into helicopter crashes.

9 Q Okay. Did you investigate whether anything -- any
10 materials that these defendants worked on had anything to do
11 with any helicopter crashes?

12 A That was not the focus of the investigation.

13 MR. SCUDERI: Thank you very much.

14 MS. SCOTT: I have no questions, your Honor.

15 MR. DREYER: No questions.

16 MR. LAIGAIE: I just want to clarify one point.

17 CROSS-EXAMINATION

18 BY MR. LAIGAIE:

19 Q I just want to clarify one point.

20 Your answer to Mr. Scuderi's question, when you said
21 you didn't have any direct knowledge of any connection
22 between any of these petitioners' actions, and a bad safety
23 record with the V-22 Osprey, I want to ask you a question
24 about that.

25 The V-22 Osprey doesn't have a bad safety record,

Carr - Cross

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1 does it?

2 A I'm un -- I'm unfamiliar with the safety record of the
3 V-22.

4 Q Okay. In fact, in Saturday's Wall Street Journal,
5 Hillary Clinton was quoted as saying the V-22 Osprey has an
6 excellent safety record, and that we believe basing it in
7 Okinawa will significantly strengthen our -- our ability in
8 providing for Japan's defenses.

9 Do you have any reason at all to disagree with the
10 Secretary of State?

11 A No.

12 MR. LAIGAIE: Thank you.

13 MR. O'MEARA: No questions, your Honor. Thank you.

14 MS. LUNKENHEIMER: Your Honor, I just have one
15 follow-up. Actually, it's going to take more than one
16 question, but --

17 THE COURT: I just wondered if you're going to have
18 Hillary Clinton testify.

19 MS. LUNKENHEIMER: Yes, your Honor.

20 (Laughter.)

21 Our subpoena power might cover her.

22 REDIRECT EXAMINATION

23 BY MS. LUNKENHEIMER:

24 Q Agent Carr, were you consulted with the U.S. Attorney's
25 Office about the charging decisions made in this

Carr - Redirect

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1 investigation?

2 A I was not.

3 Q Did you have any conversations with Government counsel;
4 myself and Ms. Taylor, about whether or not misdemeanor
5 defendants should be charged in this case?

6 A I did not.

7 Q Okay. Let me... you didn't make the charging decisions
8 in this case, did you?

9 A I did not.

10 Q No, and you don't make the charging decisions in any
11 case, correct?

12 A I do not.

13 Q Okay. But was an investigative decision made to conduct
14 reverse operations that would result in simple possession
15 cases?

16 A Yes.

17 Q Okay. And were you involved in the decision to -- to run
18 those reverse operations?

19 A Yes.

20 Q And can you, please, tell the Court why you, as the lead
21 case agent from the F.B.I., decided to -- to take that -- I'm
22 sorry.

23 Is that an unusual investigative tactic, to run a
24 reverse operation of placebo pills?

25 A Yes.

Carr - Redirect

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1 Q And is it unusual that you would also be selling such a
2 small quantity of pills; in other words, pills that would be
3 charged as misdemeanors?

4 A Yes.

5 Q Okay. Can you please tell the Court why, in your
6 investigation, you made the decision to run a reverse
7 operation in that manner?

8 A Because where -- where the situation was taking place,
9 the facility it took place, the product that was being
10 produced, and the implications of the product on the
11 soldiers.

12 Q Okay. Thank you.

13 MS. LUNKENHEIMER: I have no further questions.

14 MR. SCUDERI: Just a few questions, your Honor.

15 THE COURT: Yup.

16 RECROSS-EXAMINATION

17 BY MR. SCUDERI:

18 Q Agent, in connection with your investigation, you looked
19 at -- at the EAP access documents, the utilization records?

20 A No.

21 Q That's the early or the Employee Assistance Program.

22 Are you aware that a large percentage of
23 professional employees of Boeing, including engineers and
24 designers, were involved in the EAP?

25 A No, I was not.

Carr - Recross

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1 Q Do you know that the EAP is for people with drug and
2 alcohol programs?

3 A Yes, I'm aware of that.

4 Q Problems.

5 THE COURT: Well, it could be --

6 BY MR. SCUDERI:

7 Q You're aware of that, right?

8 THE COURT: -- it could be mental health. It could
9 --

10 THE WITNESS: It could be.

11 BY MR. SCUDERI:

12 Q It could be mental health, but --

13 MR. SCUDERI: Your Honor, we have data on that, too.

14 THE COURT: Okay.

15 BY MR. SCUDERI:

16 Q Are you aware of the large percentage of people in the
17 EAP Program are professionals, and are designers, and they
18 have drug and alcohol problems?

19 A We're speaking about Boeing?

20 Q Right, Boeing.

21 THE COURT: He testified that he didn't look at the
22 EAP stuff --

23 THE WITNESS: Right.

24 THE COURT: -- so I don't know if he can answer
25 this.

Carr - Recross

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1 BY MR. SCUDERI:

2 Q Well, you said at some point you decided to do a reverse
3 sting at Boeing; is that correct?

4 A Right.

5 Q Because the employees were involved in manufacturing
6 defense hardware; is that correct?

7 A Correct.

8 Q Did you investigate the professionals also?

9 A If they would have came across, or their names would have
10 came up within my investigation, yes, we would have.

11 Q Okay. But you -- they didn't; is that correct?

12 A They did not.

13 Q Okay.

14 MR. SCUDERI: Thank you, your Honor.

15 THE COURT: Thank you.

16 Anything further?

17 MR. LAIGAIE: Nothing, your Honor.

18 COUNSEL: Nothing, your Honor.

19 THE COURT: Okay. Thank you very much, Agent.

20 THE WITNESS: You're welcome.

21 (Witness excused.)

22 MS. TAYLOR: Your Honor, the Government would call
23 Dr. George Downs.

24 THE COURT: All right, Doctor.

25 MR. SCUDERI: Your Honor, I move for the admission

Carr - Recross

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1 of my exhibits. I don't know if I did that.

2 THE COURT: All right. Any objection to that?

3 MS. LUNKENHEIMER: No, your Honor. We'll be doing
4 the same at the conclusion today.

5 THE COURT: All right. All the exhibits are
6 admitted.

7 (HR Exhibit Nos. 1, 2, 4, 5, 6, 7, 8, 9, 11, 13, 14,
8 15 and 16 were admitted.)

9 (Jones Exhibit No. 1 was admitted.)

10 (Carr Exhibit Nos. 1 through 8 and 10 through 14
11 were admitted.)

12 (Pause.)

13 DR. GEORGE DOWNS, after having been first duly sworn
14 as a witness, was examined and testified as follows:

15 MS. TAYLOR: May I proceed, your Honor?

16 THE COURT: Of course.

17 VOIR DIRE EXAMINATION

18 BY MS. TAYLOR:

19 Q Good afternoon, Dr. Downs.

20 A Good afternoon.

21 Q If we can, Dr. Downs, can you tell the Court who you're
22 currently employed by?

23 A Yes, I'm employed by the Philadelphia College of Pharmacy
24 at the University of the Sciences.

25 Q And what is your current position?

Downs - Voir Dire

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1 A I'm a Professor of Clinical Pharmacy and the Dean
2 Emeritus.

3 Q And at my request, have you provided us with a copy of
4 your C.V. or your resume?

5 A Yes, I have.

6 Q Dr. Downs, I'm showing you what's been marked as
7 Government's Exhibit Downs 3.

8 Is that a copy of your resume?

9 A Correct.

10 Q Do you have a separate copy of your resume?

11 A No, I don't.

12 Q Hold onto that.

13 MS. TAYLOR: Counsel, do you have any objection to
14 Government Exhibit Downs 3 --

15 COUNSEL: No.

16 MS. TAYLOR: -- which is his C.V.?

17 MS. SCOTT: No.

18 COUNSEL: No objection.

19 MS. TAYLOR: Your Honor --

20 THE COURT: Okay.

21 MS. TAYLOR: -- I'd move for the admission of Downs
22 3, and ask that -- it doesn't have to be published.

23 THE COURT: Okay. I'll admit it.

24 (Exhibit No. Downs 3 was admitted.)

25 BY MS. TAYLOR:

Downs - Voir Dire

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1 Q Dr. Downs, I'm going to have you now, referring to your
2 C.V., just briefly talk a little bit about your background.

3 A Sure.

4 Q First, can you tell the Court about your education and
5 training?

6 A Sure, I'm a -- I got a Bachelor Degree in Pharmacy from
7 the University of New Mexico, and then a Doctor of Pharmacy
8 from the Philadelphia College of Pharmacy and Science.

9 Q And when did you receive those degrees?

10 A 1962 for the Bachelor's Degree and 1972 for the Doctor of
11 Pharmacy.

12 Q Did you have to serve a residency?

13 A I have served two residencies.

14 Q Can you tell the Court where you served your residencies?

15 A My first was in the United States Public Health Service
16 in New Orleans, and then I was on the -- a staff pharmacist
17 at Staten Island at the U.S. Public Health Service as well.

18 Q You indicated that you're a Professor of Clinical
19 Pharmacy; is that correct?

20 A That's correct.

21 Q Can you tell the Court what clinical pharmacy --

22 A Sure.

23 Q -- involves?

24 A Yeah, the stereotype of a pharmacist is a pharmacist who
25 works in a community practice, and indeed what clinical

Downs - Voir Dire

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1 pharmacy has done is we basically round with physicians, we
2 basically make decisions as far as drug-dosing outpatients,
3 drug therapy, and work with the physicians to try to improve
4 medication health.

5 Q So you're actually a part of the treating process a
6 clinical pharmacist?

7 A Correct.

8 Q Now, in your resume, you detail -- and now I'm looking at
9 Page 3 -- a series of professional affiliations.

10 A Correct.

11 Q I'm trying to just speed this up a little bit, because
12 you have a lot.

13 Approximately how many organizations are you
14 affiliated with?

15 A I would say about a dozen.

16 Q And do all of them involve your practice as a pharmacist?

17 A Yes.

18 Q Have you been affiliated with organizations throughout
19 the some-odd 30 years, I guess, of your practice?

20 A Yes, I have.

21 Q So you also --

22 A It's more like 40.

23 Q I'm sorry.

24 A It's 40.

25 Q You said 40?

Downs - Voir Dire

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1 A I said 40.

2 Q Okay. I'm dating myself. Your some-odd 40 years of
3 practice.

4 Can you tell the Court what SARPH is?

5 A Yes, SARPH is called Secundum Artem Reaching Pharmacists
6 with Help. It is the impaired pharmacist program at
7 Pennsylvania. It's a voluntary organization that works very
8 closely with the State Board of Pharmacy to identify and
9 provide after-care contracts for pharmacists who have
10 substance abuse issues.

11 Q And approximately how long, if you know, how SARPH been
12 in existence?

13 A They started in about 1972.

14 Q And is SARPH -- does SARPH continue to be in existence
15 today?

16 A Yes, it is.

17 Q Do you have an additional role presently with SARPH?

18 A Yes, I'm also on their Board of Directors.

19 Q Now, prior to being on the Board of Directors, what type
20 of activities did you do with SARPH?

21 A Oh, I have been involved with SARPH since the mid-80s
22 when I started working with the students to try to intervene
23 on them to get them into substance abuse treatment. SARPH
24 was the organization that we use in order to provide the
25 after-care for those students. So there's a contractual

1 agreement that a student has to work with in SARPH.

2 Q During your career, have you also served on university
3 committees?

4 A Yes, I have.

5 Q And I want to talk to you specifically, first,
6 approximately how many committees have you served on?

7 A I would say 25, 30.

8 Q And what I want to do is I want to specifically talk to
9 you about the Task Force on Drug and Alcohol Abuse.

10 Is that a committee you served on?

11 A Yes, I did.

12 Q Can you tell the Court about your role and duties on that
13 committee?

14 A This is a task force that was established to try to
15 determine a policy for working with students at the
16 university that may have substance abuse problems.

17 Q And was that -- how long did you serve on that task
18 force?

19 A That was about five years.

20 Q Throughout your career, have you received numerous
21 honors?

22 A Yes, I have.

23 Q Have you also published approximately 31 publications?

24 A Yes.

25 Q And on those publications, are you majorly the lead

1 contributor?

2 A Yes.

3 Q In one of your publications -- well, one of your
4 publications is entitled, "The Challenges of Assisting the
5 Chemically-Impaired Pharmacist."

6 Can you tell the Court just briefly what that goes
7 into?

8 A That -- that basically looks at the issues that we have
9 to determine when we have a pharmacist who basically has a
10 substance abuse problem. Remember that pharmacists have
11 access to drugs, so that they're at higher risk than normal
12 populations for substance abuse issues, and working with them
13 to make sure that we can get them into treatment programs,
14 get them into after-care programs, and let them continue
15 working.

16 Q Have you also served as a reviewer for pharmacy or
17 pharmaceutical publications?

18 A Yes, I have.

19 Q And I'm sure the Court is aware what a reviewer does, but
20 in two sentences for us, just tell us.

21 A You get publications and you go back and act as a
22 reviewer to determine whether that publication is worthy to
23 be published.

24 Q And you've done that on approximately five different
25 types of publications --

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1 A Correct.

2 Q -- is that correct?

3 You've also, over your career, done approximately 45
4 presentations?

5 A Or more.

6 Q Or more.

7 And those are primarily in the area of pharmacy and
8 pharmacy-related issues --

9 A Correct.

10 Q -- is that correct?

11 In addition, you've been part of eight research
12 grants?

13 A Correct.

14 Q Did one of those grants involve the SARPH Program that
15 you've already explained to the Court?

16 A Yes, I did.

17 Q Were you also involved in what's called SHAPE?

18 A SHAPE. SHAPE was another grant that we obtained in order
19 to look at heightening awareness for students on campus, so
20 that they would be willing to come forward and help other
21 students that may have a substance abuse issue, but they're
22 afraid to go forward and -- and getting some help.

23 Q Now, you have testified that you have some experience
24 working with pharmacists on substance abuse issues --

25 A Correct.

1 Q -- pharmacy students with substance abuse issues. You've
2 written on the subject, you've gotten grants on the subject.

3 Do you have any other experience in the area of
4 substance abuse treatment or monitoring that would enable the
5 Court to make a decision about your expertise in the area?

6 A Over the -- since the mid-80s, I have probably intervened
7 on over 100 students that have had a risk of substance abuse,
8 have done interventions, evaluations, sent them to
9 professionals for absolute evaluation, and then if they have
10 been identified as having substance abuse issues, I serve as
11 the monitor on campus for them when they're in their
12 after-care contract.

13 Q And you've indicated you've done it over how many years,
14 sir?

15 A Well, about 25 years.

16 Q About 25 years.

17 MS. TAYLOR: Your Honor, at this time the Government
18 would offer Dr. George Downs as an expert in pharmacy with a
19 specialty in the treatment of substance abuse.

20 MR. SCUDERI: No questions, your Honor.

21 MR. DREYER: No questions, your Honor.

22 MS. SCOTT: No questions.

23 MR. LAIGAIE: No questions.

24 THE COURT: Any objection to him being --

25 MR. LAIGAIE: No, no, your Honor.

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1 MR. DREYER: No, your Honor.

2 MS. SCOTT: No, your Honor.

3 MR. SCUDERI: No, your Honor.

4 THE COURT: All right. I'll let him testify as an
5 expert in that area.

6 MS. TAYLOR: Thank you, your Honor.

7 DIRECT EXAMINATION

8 BY MS. TAYLOR:

9 Q Dr. Downs, have you ever testified in a court before?

10 A No, I haven't.

11 Q And are you being compensated in any way for your
12 testimony today?

13 A No.

14 Q What I'd like to do, Dr. Downs, is to direct you very
15 specifically to the area of the science and substance abuse.

16 Can you tell the Court what percentage, in your
17 experience -- not only your experience -- I want you to rely
18 on your research, as well as any publications that you have
19 written, okay? Can you tell the Court what percentage of the
20 U.S. population is at risk to become addicted to some
21 substance?

22 A The -- the data seems to show that there's probably
23 between 10 and 15 percent of the population's at risk.

24 Q And what effect is the substance user, not abuser, but
25 the substance user seeking?

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1 A In the case of opiates, what they're looking for pain
2 relief, because these drugs are prescribed for relief of
3 pain.

4 Q Is that a positive effect or a negative effect?

5 A That would be positive, obviously, if you have pain.

6 Q What is a euphoric effect?

7 A A euphoric effect is usually a secondary effect that is
8 part of the drug, but pain relief occurs through one
9 mechanism, euphoria occurs through another mechanism, the
10 pleasure center of the brain. That is usually part of the
11 opiates, but in the case of people who start to abuse that,
12 it becomes the reason why they continue.

13 Q What is a negative effect that -- that -- of opiate use
14 or abuse?

15 A Well, the negative effect would be what we call
16 dysphoria, which is the opposite of euphoria, which would be
17 when you start to have discomfort from not having the drug,
18 if you become intolerant to it.

19 Q Now, you prepared a chart dealing with the tolerance of
20 opiate abuse; is that correct?

21 A Yes, that's correct.

22 Q Before we pull up the chart, I want you to explain to the
23 Court what is an opiate?

24 A An opiate is basically what we in laymen's terms call a
25 narcotic. It's a drug which is basically utilized

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1 predominantly for pain relief usually in patients who have
2 severe pain.

3 Q Now, how is it that an opiate achieves the goal of
4 relieving pain?

5 A It does that through usually making the brain sense that
6 the pain isn't there, and so it kind of blocks the sensation
7 that the -- the pain fibers going up to the brain.

8 Q Is that normally called a central nervous system
9 depressant?

10 A All -- all opiates have a central nervous system
11 depressant effect that you get sleepy, you can get drowsy
12 from them.

13 Q And is that in order -- strike that.

14 And as a depressant -- strike that.

15 Because an opiate acts as a depressant, is that why
16 it can have the effect on the brain of sort of convincing it
17 that the pain is lesser than it is?

18 A It is part of that process, yes, it's more complex than
19 that, but that certainly is a component of it.

20 Q Okay. Is fentanyl also an opiate?

21 A Yes, it is.

22 Q Are oxycodones opiates?

23 A Yes, they are.

24 Q Are Percocets opiates?

25 A Yes.

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1 Q Can you compare for Judge Rice the relative potency as
2 opposed to a fentanyl, an oxycodone product, or oxycodone in
3 Percocet drugs?

4 A Sure. If you use morphine as kind of your baseline for
5 that, oxycodone is about two, two-and-a-half times more
6 potent than morphine. Fentanyl is between 50 and 100 times
7 more potent.

8 Q Than morphine -- than morphine?

9 A That's right.

10 MS. TAYLOR: Can we show Downs Exhibit 4, please?

11 (Discussion held off the record.)

12 MS. TAYLOR: Any objection to 4?

13 COUNSEL: No objection.

14 MS. SCOTT: No objection.

15 BY MS. TAYLOR:

16 Q Dr. Downs, you have -- well, you see before you, and on
17 the screen, what's been marked as Government's Exhibit Downs
18 4; is that correct, sir?

19 A Correct.

20 Q And is that entitled, "Tolerance to Opiates"?

21 A Yes, it is.

22 MS. TAYLOR: With the Court's permission, Dr. Downs,
23 could you come down from your seat, approach your chart, and
24 explain to Judge Rice what it is your chart shows?

25 (Witness leaves the stand.)

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1 MS. TAYLOR: Doctor -- I'm sorry -- you were
2 supposed to come down after --

3 THE COURT: That's all right. He's already there.

4 (Laughter.)

5 MS. TAYLOR: Sorry, your Honor.

6 THE COURT: He's working for free. You've got to
7 give him some leeway.

8 THE WITNESS: Yeah, right.

9 (Discussion held off the record.)

10 THE WITNESS: Do I need a mic for this or not?

11 THE COURT: Do you pick him up, Christian?

12 (Discussion held off the record.)

13 THE WITNESS: What I tried to -- what I tried to
14 develop in this chart is kind of the positive and negative
15 effects of the use of -- of analgesics or opiates, and if you
16 look at the --

17 THE CLERK: Dr. Downs, one second. Come closer.

18 THE WITNESS: You still can't get it? What if I --
19 what if I stand here and talk?

20 THE COURT: Yes, that would be great.

21 THE CLERK: Yes, is that okay?

22 COUNSEL: That's great. We can hear you now.

23 THE WITNESS: Okay. And I'll just use this as my
24 chart.

25 If you look at the first triangle there, you'll see

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1 what would happen if -- if you had pain, and you basically
2 took an oxycodone 5 milligrams for the pain, so --

3 MS. TAYLOR: Your Honor, can I assist him and point
4 to what he's talking about, because he can't do both?

5 THE COURT: Sure.

6 (Discussion held off the record.)

7 THE WITNESS: So while my assistant is working on
8 this, that's -- right there, okay.

9 And you'll notice that the arrow just points at what
10 the dose is for that, as -- and you'll see that over a period
11 of time then you have to use another dose in order to get the
12 pain again, so it's a back and forth process.

13 So second again. But then you'll notice that over a
14 period of time, you develop tolerance, and tolerance is that
15 you need a larger dose of the drug in order to get the same
16 effect. So in order to get the same effect now, I have to
17 use a little larger dose of the drug, so you see it takes a
18 little bit further to get there --

19 BY MS. TAYLOR:

20 Q Dr. Downs --

21 A -- to get the same effect.

22 Q -- Dr. Downs, explain what it means -- first of all, did
23 you create this chart?

24 A Yes, I did.

25 Q Okay. Explain what it means when your line on a graph

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1 goes down below which you've identified as the baseline?

2 A That -- what that is is where you're going to start to

3 get the negative effects, or the dysphoria, or the withdraw

4 symptoms. So you start to see where it starts, and you get a

5 larger dose in order to get the same effect, and then you

6 need more of a dose. And this -- there's the time factor

7 here is not days or hours, this could be weeks or months,

8 okay, as it goes.

9 But you'll notice that in order to get to the same

10 effect, whether that be pain relief, or whether that be

11 euphoria, you need a larger dose of the drug. That's

12 tolerance. And, so, as the person takes more, you'll see

13 that the arrow gets larger, and so you need a larger dose of

14 the drug.

15 What happens over a period of time in addiction is

16 that in order to get -- the dose gets to be so large, and to

17 be so difficult, that in order just to get to be back to

18 baseline to be normal, you're going need that much drug, and

19 that's where you see in those last two triangles that you see

20 just getting back to baseline.

21 The biggest cause of death in opiates is respiratory

22 depression, and one of the big problems is that euphoria is

23 the one thing that starts to become tolerant, the fastest,

24 and then the thing that becomes tolerant next would be the GI

25 tract and the eyes. And then if a person tries to take an

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1 extra dose in order to get back up to the euphoria, they can
2 die from respiratory depression.

3 And, so, you see now that respiratory deaths from
4 opiates have exceeded deaths from automobile accidents in
5 this country, just because of the effect that you're getting
6 there.

7 Q Dr. Downs, you can go back to your seat. I can ask you
8 more questions about the chart up there.

9 (Witness retakes the stand.)

10 BY MS. TAYLOR:

11 Q Now, Dr. Downs, I want to stay with the chart just for a
12 few more minutes.

13 On your chart you have what's called a baseline.

14 A Correct.

15 Q What does that mean?

16 A A baseline would be what you and I would consider normal
17 before we have pain.

18 Q So that's no pain --

19 A Just --

20 Q -- and also no drugs?

21 A That's correct.

22 Q So hopefully that's how you and I are here today.

23 A Correct.

24 Q When there is pain, the arrow on your chart goes up --

25 A Correct.

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1 Q -- correct?

2 And that's the beginning of the use of the opiate
3 for the pain relief?

4 A Correct.

5 Q And that use can be prescribed or illegally obtained,
6 correct?

7 A Yes.

8 Q As your chart goes forward, left to right, we go further
9 into what you have marked as the negative effect; is that
10 correct?

11 A Correct.

12 Q Is that the area where now we have abuse or are we simply
13 building up tolerance?

14 A What I'm showing here is building up tolerance. Abuse is
15 part of that, because as you -- as you come more tolerant,
16 you have to use a higher dose. People can't have severe pain
17 like people who have terminal cancer, and they can become
18 tolerant, but they may not be abusing the drug, so they --

19 Q Basically more --

20 A That's right.

21 Q -- to get pain relief?

22 A So there's -- there's a difference between tolerance,
23 dependence, and addiction.

24 Q Okay.

25 A So the addiction is when you start to get a craving that

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1 you have to be able to get this drug in order to -- to
2 function.

3 Q Now, Dr. Downs, did you prepare, at my request, a summary
4 of your testimony and the terms as you would view the terms?

5 A Yes, I did.

6 Q And do you have a copy of that summary with you, sir?

7 A Yes, I do.

8 Q And if you could, could you turn to that?

9 A (Witness complies.)

10 Q Now, this is not a marked exhibit, but I'm going to ask
11 you some questions, and I'm going to ask you to explain
12 certain terms to Judge Rice, okay?

13 A Okay.

14 Q You indicated that there's a difference between addiction
15 and dependency --

16 A Correct.

17 Q -- and you've explained to us what addiction is.

18 What is dependency?

19 A Dependency is when you have a physical dependency, so
20 that you can get the withdraw syndrome.

21 Q And how is that different from addiction?

22 A Addiction is different in that addiction, there's five
23 characteristics of that, which there is chronic, that you've
24 lost control over your drug use, so the people using it,
25 there's compulsive use, they just have to use it, there's

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1 continued despite of harm. I know that this is not something
2 I should be doing, but I have to continue doing it anyway,
3 and then the last is craving.

4 Q And craving simply means I have to have it?

5 A Have to have it.

6 Q Okay. Now, you've talked about euphoria and you've
7 described it as the opposite of dysphoria.

8 A Right.

9 Q Explain what euphoria is and what dysphoria is.

10 A Euphoria is a feeling of well being. It's a very intense
11 feeling of well being. Usually when a person is addicted,
12 they're looking for the rush, which is the rapid effect from
13 the drug, and then they have a state of euphoria. And then
14 they just -- they can feel happy, they feel ecstatic, they --
15 they basically just feel great.

16 Q They feel great.

17 And that is a condition brought on by the drug?

18 A That's correct. It's usually not achieved normally.

19 Q And what is the difference between euphoria and
20 intoxication?

21 A Intoxication would be when somebody takes so much of the
22 drug that they become comatose, and that those are the folks
23 that come to the hospital, and that we have to use Naloxone
24 on in order to -- to revive them.

25 Q Now, on your chart, and in your experience, at some point

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1 does the negative effects of drugs in the abuser become more
2 important than the positive effects?

3 A What happens at a point when they're dosing to become so
4 high is that because of the withdraw they are tending to
5 avoid withdraw, and so that they're avoiding the negative
6 effects of the drug, trying to get back toward normal.

7 So the individual may take a dose in the morning in
8 order just to get up and get moving, in order to be able to
9 get to work. And then as the day wears on, they may need
10 more in order to just function, and they're always looking to
11 try to get toward normal, but unfortunately what happens is,
12 they can't control up versus down. It's just one of --
13 because they're not basically prescribed this thing. They're
14 using every drug they can get their hands on.

15 Q So they can't achieve normal?

16 A They cannot.

17 Q You've talked a little bit about withdraw symptoms, and
18 on your chart, I believe -- I can't read it --

19 A Can I read it to you?

20 Q -- you talked about what withdraw is. You write it's a
21 wide range of symptoms that occur after stopping or
22 dramatically reducing opiate drugs after heavy and prolonged
23 use.

24 That's your definition, correct?

25 A That's correct.

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1 Q Can you tell Judge Rice some of the symptoms individual
2 addicted to opiates will suffer when they are going through
3 withdraw?

4 A Frequently withdraw is almost the opposite of euphoria,
5 so you're looking at agitation, you're looking at diarrhea,
6 because they get constipated when they have -- when they're
7 on opiates, they get chills, they get goose flex -- goose
8 flesh -- I'm sorry -- nausea, vomiting, muscle cramps,
9 involuntary movements, very, very uncomfortable.

10 Q Have you heard withdraw symptoms also include an
11 inability to sleep?

12 A Yes.

13 Q Have you heard withdraw symptoms including increased
14 anxiety and apprehension?

15 A Yes.

16 Q What about crawling out of your skin?

17 A That was a statement that one of my students described to
18 me as the sensation that he felt when he was going through
19 withdraw, and that's very similar to the goose flesh, or --
20 or the cold turkey effect that you're getting.

21 Q Now, you were present a little over a week ago when we
22 presented the testimony of both Jonathan Sullivan -- Jonathan
23 Sullivan as well as Charles Haux; is that correct?

24 A That's correct.

25 Q And I want to direct your attention back to their

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1 testimony when they talked about feeling an increased amount
2 of energy. I believe Mr. Sullivan said he felt like
3 Superman. And then when they talked about withdraw, they
4 talked about having to go home and the other withdraw
5 symptoms that we've testified.

6 Can you explain to the Court how it is an individual
7 who testifies is clearly addicted long term to use of opiates
8 can feel like Superman?

9 A The -- the paradoxical effect, and it's really difficult
10 to try to describe that -- the paradoxical effect is the
11 euphoria that you feel is such that you can get, in a sense,
12 a numbing sensation so that nothing that -- nothing bothers
13 you around you, so you can focus really on the sensation that
14 you're looking for, okay. That's the euphoria.

15 The withdraw on the opposite side of that is just
16 going to be this terrible sensation that you're trying very
17 hard to avoid.

18 Q Now, if I feel like I'm Superman, in reality am I
19 Superman?

20 A No, you're not.

21 Q Do I know the difference?

22 A No, you don't.

23 Q Why?

24 A Because you are under the influence. You do not have the
25 ability to be able to -- to distinguish between whether you

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1 can function or not. You feel like you can.

2 Q But you don't know?

3 A You -- you have a central nervous system depressant,
4 which is basically keeping you from doing that.

5 Q Now, scientifically, is it possible for opiates to have
6 the effect on someone to give them energy to increase their
7 energy?

8 A Not -- not that I'm aware of. It's the opposite.

9 Q Because it's a depressant?

10 A Right.

11 Q Can workers function normally while they're abusing
12 drugs?

13 A Not if they are not under control, and let me --

14 Q What does that mean?

15 A -- let me describe that.

16 There are patients who basically are on methadone
17 maintenance programs --

18 Q Okay.

19 A -- for instance, that can have a controlled environment
20 where basically they -- they can function. I'm not sure that
21 they can function normally, because most of the patients I've
22 seen usually try to -- they will abuse that as well by
23 selling some of the methadone to get something else. But,
24 overall, the goal of those programs, which is to try to
25 substitute a long-acting drug for the short-acting drugs that

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1 basically give you the high and the euphoria.

2 For anybody who basically is using short-acting
3 drugs, I don't think it's possible to basically be normal,
4 because you're always somewhere in the -- either the euphoric
5 or the withdraw state. Very rarely that you're going to be
6 in that normal state.

7 Q And that's because they can't regulate --

8 A That's right.

9 Q -- the amount of drugs that they're going to need
10 consistently to stay normal?

11 A That's correct.

12 Q You indicated -- well, I just have one last question --
13 you indicated that workers who think they're Superman are not
14 really Superman.

15 A That's correct.

16 Q Is addiction, drug addiction, something you would call a
17 disease of denial?

18 A Drug addiction to me is a disease. It's a disease of
19 denial, because they're the last person usually to determine
20 that they have the problems, they're an addict themselves.
21 And it's also a disease of relapse, in that it's very
22 difficult for people without good care to maintain their
23 sobriety.

24 Q Now, Dr. Downs, you heard the testimony of Mr. Sullivan
25 and Mr. Haux, and they indicated the levels, the amounts of

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1 pills they had to take in order to make it through the day.

2 Do you understand that?

3 A Yes.

4 Q Can you compare for Judge Rice the impact that would have
5 on the abuser versus the impact it would have on someone like
6 yourself or myself that is not using those drugs?

7 A If we were to use the -- the level of drugs that a
8 tolerant person was taking, we would die.

9 Q And why is that?

10 A It would be respiratory depression. It would just go
11 down to our brain stem and shut off our respiratory center.

12 Q And how is the tolerant -- how is the abuser able to take
13 those drugs and not die?

14 A That -- that's a great question. The tolerance develops,
15 the brain will develop tolerance to that where you can
16 continue to increase the dose. Now, those folks will
17 probably breathe more shallow, okay. They may not be able to
18 get that, and they're much at higher risk if you add on
19 another drug like a benzodiazopene, Valium or Xanax, that
20 they could overdose and -- and suppress their respiration
21 where they would die. But the brain has an amazing ability
22 to become tolerant.

23 MS. TAYLOR: I have nothing further, Dr. Downs.

24 THE COURT: All right.

25 MR. SCUDERI: May I, your Honor?

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1 THE COURT: Sure.

2 CROSS-EXAMINATION

3 BY MR. SCUDERI:

4 Q Doctor, there are a lot of things that can kill you,
5 right?

6 A I'm sorry. I didn't hear your question.

7 Q Can you be addicted to alcohol?

8 A You can get addicted to alcohol, yes, you can.

9 Q Can you use alcohol recreationally and not be addicted?

10 A Yes, you can.

11 Q Can you use opiates recreationally and not be addicted?

12 A Yes, you can.

13 Q How about marijuana?

14 A Yes, you can.

15 Q Benzos?

16 A Yes.

17 Q Xanax?

18 A Yes.

19 Q Can you take a Xanax at night and be fine the next day?

20 A It depends on which Xanax you take, whether it's
short-acting or long-acting.

22 Q And would it depend upon your tolerance?

23 A It could depend on your tolerance as well.

24 Q So in theory I could take one at oxycodone a day, or then
25 two a day because I've built up a tolerance?

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1 A Correct.

2 Q And when I take my first oxycodone it's much more
3 powerful than my second oxycodone; isn't that correct?

4 A So you're talking about tolerance; is that correct?

5 Q Tolerance.

6 A Yes.

7 Q Tolerance.

8 So that to achieve the same effect, the feeling of
9 euphoria or normalcy; is that correct?

10 A You would need a --

11 Q You could appear normal --

12 A -- you would need a higher dose.

13 Q -- even though -- even though you could be taking ten
14 oxycodones a day; is that correct?

15 A In order to get the --

16 Q Could you take --

17 A -- euphoria --

18 Q -- could you take ten --

19 A -- effect --

20 Q -- could you take --

21 A -- in order to get the euphoria --

22 THE COURT: Hold on.

23 MR. SCUDERI: I'm sorry.

24 MS. TAYLOR: Objection.

25 MR. SCUDERI: I'm sorry.

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1 MS. TAYLOR: If he could just let --

2 MR. SCUDERI: I didn't know he was talking.

3 MS. TAYLOR: Okay.

4 THE WITNESS: Okay. In order to get the euphoric
5 effect, with tolerance you would need a higher dose, that's
6 correct.

7 BY MR. SCUDERI:

8 Q Okay. And that could escalate, correct?

9 A It certainly can.

10 Q And that's true for somebody who is quote, "taking it for
11 non-medical reasons and for medical reasons"; isn't that
12 correct?

13 A That's correct.

14 Q So, for example, if someone has cancer, and has a lot of
15 pain, that person would need to take more and more and more?

16 A That's correct.

17 Q And, for example, if a cancer patient took five
18 oxycodones, let's say 30 milligrams, they could appear
19 normal, where if I took one, I could appear -- I might fall
20 asleep; is that correct?

21 A I'm not sure that they would appear normal. They may not
22 have as much pain.

23 Q They may not have as much pain, but would they appear
24 unbalanced?

25 A It's hard to say.

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1 Q Okay. So you can't -- you can't say that's so.

2 In theory you could not necessarily ID someone who
3 is abusing opiates?

4 A Yes, you can.

5 Q You can. You can always do that?

6 A You can -- well, in -- in medical -- in a medical
7 diagnosis, the first thing you look at is their eyes, and you
8 ask questions about their GI tract. The first two things.

9 Q Okay. Well, assume you couldn't ask questions.

10 Could you look at me today and say I'm doing opiates
11 or not doing --

12 A No.

13 Q No? Probably not, correct?

14 And if I were taking -- if I built up a tolerance
15 for opiates, could you tell just from talking to me?

16 A That's a difficult question to answer.

17 Q Okay. Now, withdrawal from alcohol, is that also
18 serious?

19 A That can be deadly.

20 Q That's deadly. It's actually more deadly than opiate --

21 A That's correct.

22 Q -- withdraw; isn't that correct?

23 A That's correct.

24 Q Now, I saw one of your publications here. You wrote an
25 article called, "A Non-Medical Use of Prescription Opioids

Downs - Cross

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1 and Stimulants Among Student Pharmacists," correct?

2 A Correct.

3 Q And student pharmacists are individuals who want to be
4 pharmacists, correct?

5 A That's correct.

6 Q And as a pharmacist, you've got a very potentially
7 dangerous job; isn't that correct?

8 A That's correct.

9 Q Because if you prescribe, or if you deliver the improper
10 or the wrong dosage of a drug to a patient, you can kill
11 them; isn't --

12 A Yes --

13 Q -- that correct?

14 A -- that is correct.

15 Q For as simple who has the hiccups; isn't that correct?

16 A Okay.

17 Q So you are basically holding somebody's life in your
18 hands?

19 A Correct.

20 Q Now, yet you wrote a paper about the non-medical use
21 among student pharmacists.

22 A Right.

23 Q So I assume that begs the question that there were
24 students of pharmacy who were doing drugs?

25 A We were surveying to see if there were. That was --

Downs - Cross

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1 Q Okay.

2 A -- a survey that was done.

3 Q And the answer to your survey was yes?

4 A Yes.

5 Q Okay. And were there also practicing pharmacists who
6 were using drugs for non-medical purposes?

7 A Not in that survey, but, correct, there are.

8 Q Another thing.

9 In your interventions, did you only intervene with
10 students or did you intervene with pharmacists?

11 A I intervened with pharmacists as well.

12 Q Okay. And you know those people handled dangerous drugs
13 --

14 A Correct.

15 Q -- correct?

16 And did those people receive treatment?

17 A Correct.

18 Q Did you go to the authorities and say, Hey, these people
19 are using drugs, they might kill somebody?

20 A Yes.

21 Q You did that?

22 A Yes.

23 Q And did they lose their licenses?

24 A No, because we have the Impaired Pharmacists Program in
25 Pennsylvania, that the State Board allows those people to go

Downs - Cross

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1 into treatment, into after-care programs, contractual
2 agreement, and then at a time be able to go back and maintain
3 their license.

4 Q Is that a recognition by you and by others that people
5 with this disease can be cured?

6 A This disease is not curable. It is treatable.

7 Q It is treatable.

8 Is it controllable?

9 A It's controllable.

10 Q To the point where you would feel comfortable saying that
11 this person who has received treatment for, whether it's
12 opioids or alcoholism, is competent to be a licensed
13 pharmacist?

14 A Correct.

15 Q And handle dangerous drugs?

16 A Correct.

17 Q And to treat people?

18 A Correct.

19 Q And you feel the same way about people who -- the general
20 public who abuses opioids or alcohol --

21 A Correct.

22 Q -- isn't that correct?

23 That your goal really is rehabilitation --

24 A Correct.

25 Q -- to help the individual and it can be done -- they can

Downs - Cross

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1 become productive; isn't that correct?

2 A Correct.

3 MR. SCUDERI: Thank you very much.

4 Thank you, your Honor.

5 CROSS-EXAMINATION

6 BY MS. SCOTT:

7 Q Good afternoon, Dr. Downs.

8 A Good afternoon.

9 Q Sir, you indicated upon questioning on direct
10 examination, that you don't believe workers who are taking
11 opiates could function normally --

12 A That's correct.

13 Q -- is that right?

14 A That's correct.

15 Q You've heard the term "functional addict," right?

16 A Yes, I have.

17 Q And it's fair to say that that term is usually used to
18 describe individuals who are able -- who are taking various
19 types of drugs, including opiates, but able to function
20 normally both with their family and in the work place --

21 A Okay.

22 Q -- is that right?

23 A That's correct.

24 Q So you would agree that there are times, or at a period
25 of time where a person who is taking opiates could, in fact,

Downs - Cross

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1 work in their work place, right?

2 A I would agree if they're in -- if they have a control
3 over the opiates. So normally what happens in -- in the case
4 of methadone or give norpine, is that there's somebody who
5 basically is monitoring and controlling the -- the dosing of
6 those drugs.

7 Q Okay. Well, there are some opiates, including the
8 Percocet, oxycodone, and fentanyl that are prescribed by
9 physicians --

10 A Mm-hmm.

11 Q -- and distributed by pharmacists --

12 A Correct.

13 Q -- is that right?

14 A That's correct.

15 Q And individuals who are taking those opiates are not
16 precluded from working, right?

17 A Not necessarily.

18 Q So, in fact, physicians will often say, Well, you have to
19 take some time off from work, but then you can return after a
20 certain amount of days; is that right?

21 A Frequently as long as -- and I can't say for sure that
22 whether the dose was decreased as -- when they went back to
23 work, you know, after the pain was gone.

24 Is that what you're implying?

25 Q Well, no.

Downs - Cross

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1 A Oh, okay.

2 Q My question is this: There are times when an individual
3 can still be in pain, still take opiates, and go back to
4 work; is that right?

5 A That's right.

6 Q And they're under a physician's care?

7 A They're under a physician's care and they may need to
8 modify what they do.

9 Q Okay. Then an individual who is not under that
10 physician's care is still on the same dosage would -- is not
11 any different than -- than the person who is still under the
12 physician's care; is that right?

13 A I -- I have difficulty with that -- that premonition,
14 because I don't think that a person who basically is
15 obtaining the drug legally, first of all, knows what they're
16 getting, and whether they're getting the same dose, or
17 whether they have to change drugs because of access.

18 Q Well, in this case, it's fair to say that you don't have
19 any idea how long any of the individuals sitting here, the
20 defendants, were using the drug --

21 A No, I don't.

22 Q -- is that fair to say?

23 A That's correct.

24 Q You don't know whether it was a week, two weeks, or two
25 years?

Downs - Cross

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1 A That's correct.

2 Q And, so, you cannot say with certainty that these
3 individuals could not perform their -- their work duties?

4 A That's correct.

5 Q You spoke about Mr. Sullivan's testimony about a
6 week-and-a-half ago. Mr. Sullivan who testified that he felt
7 like Superman.

8 A Yes.

9 Q Do you recall that Mr. Sullivan testified that he at
10 times was doing the work of two individuals --

11 A Yes, I do.

12 Q -- is that right?

13 And do you also recall Mr. Sullivan's testimony that
14 he was performing those duties with no problems?

15 A In his -- his -- that was his statement, that's correct.

16 Q Well, it's fair to say that you're not aware of any of
17 the problems that he may have had, and you're not aware that
18 those duties were not, in fact, performed well?

19 A I -- I don't have a comment on that.

20 Q Because you just don't know?

21 A Well, I can give you my supposition.

22 THE COURT: No, you can't guess.

23 BY MS. SCOTT:

24 Q Well, I wouldn't want you to give your supposition.

25 THE COURT: She just wants you to testify if you

Downs - Cross

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1 know.

2 THE WITNESS: I do not know.

3 BY MS. SCOTT:

4 Q Okay. So you can't rebut that?

5 A That's correct.

6 MS. SCOTT: I have no further questions.

7 THE COURT: I have a question for you. Thanks, Ms.
8 Scott.

9 If I were to take fentanyl or oxycodone, what type
10 of employment-related restrictions would a doctor or
11 pharmacist recommend?

12 THE WITNESS: They would probably not have you do
13 anything that included heavy equipment or driving. It's
14 almost no different than any kind of depressant to your
15 central nervous system.

16 THE COURT: And why is that?

17 THE WITNESS: Because basically it changes your
18 perception.

19 THE COURT: How so?

20 THE WITNESS: Just like alcohol would do. So that
21 people who drink alcohol and get tolerant to it, they can
22 drink a substantial amount of alcohol, but still feel like
23 they're normal. But if you get them in a car, they get in
24 accidents. So there's a higher incidence of alcohol or
25 marijuana-related accidents, because of the drugs.

Downs - Cross

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1 THE COURT: I guess this is a bit of a hypothetical,
2 but in the case of people at Boeing, assuming there's no
3 history of work-related accidents, or poor performance --

4 THE WITNESS: Mm-hmm.

5 THE COURT: -- how do you explain the use of the
6 drug --

7 THE WITNESS: I --

8 THE COURT: -- on the job?

9 THE WITNESS: -- I pondered that.

10 THE COURT: Okay.

11 THE WITNESS: And I kept --

12 THE COURT: Because I have been, too.

13 THE WITNESS: I think back to my students. Most of
14 the students that I intervene on are very bright students,
15 okay. They're very -- they're very intelligent people, and
16 they can do very well for periods of time, until something
17 happens. So when we start to see grades drop, and that could
18 be -- and they could have been basically using drugs for
19 several years before that occurs. Usually you see something
20 happens, whether they quit going to class, they get in fights
21 with their classmates or their girlfriends, they have social
22 problems, that sort of thing affects them. Something usually
23 causes that to occur. And some of them go through, we never
24 see it until they go out and start practicing, and they get
25 arrested for stealing drugs.

1 THE COURT: Now, in this case, I mean there has been
2 testimony that Boeing had -- and Agent Carr described it as
3 an epidemic.

4 THE WITNESS: Yes.

5 THE COURT: How would you explain the lack of
6 performance-related issues if there's an epidemic of
7 prescription drug use?

8 THE WITNESS: You're asking a tough question.

9 THE COURT: That's why you're the expert.

10 THE WITNESS: That's why I'm here, right?

11 I would -- I would think that -- and I don't know
12 the circumstances of how the drugs were being done there.
13 I'm assuming what happened, these folks started to get pretty
14 tolerant to their drugs, and so they were able to, quotation
15 mark, "function," okay.

16 I don't know whether there were times when they were
17 euphoric, like the individual that could do the Superman job.
18 I would assume at that time he was high and could do that.

19 But at the other times he had to be sent home,
20 because he couldn't function. He was in withdraw. And so
21 that you get those -- there are times that I would assume
22 some of these folks also probably did this sporadically, so
23 that you could do, you know, weekends of abusing, and then
24 function during the week, and then go back to the weekend.
25 It's just like alcoholics do sometimes.

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1 It depends on the pattern that you see, and that's a
2 very difficult question.

3 What's impressive is that they said one in four
4 people were using at the plant. That's substantial. 25
5 percent is higher than the national average.

6 THE COURT: Okay.

7 MR. SCUDERI: Your Honor, can I follow-up with what
8 you said?

9 THE COURT: Sure.

10 CROSS-EXAMINATION

11 BY MR. SCUDERI:

12 Q Doctor, what I was -- I mentioned earlier in my cross, I
13 mean there is recreational use of an alcohol, opiates,
14 marijuana --

15 A Mm-hmm.

16 Q -- benzos, other -- other Schedule IV drugs; isn't that
17 correct, and these people can function very well in society?

18 A Well...

19 Q Well, I know it depends on the definition of the word
20 "function."

21 A I know. It's a -- alcohol is a more common one that we
22 see, okay. If you look at functional alcoholics, and you
23 probably all have them somewhere in your days, they can
24 function pretty normally, okay. They usually have family
25 problems, they have other things that go on that they can

Downs - Cross

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1 hide from you until they basically crash and something
2 happens to them, or they get a DUI. There's -- there's
3 usually something that occurs that precipitates that, but you
4 usually can't see it.

5 Q But can you drink alcohol, or take drugs, and not be
6 addicted?

7 A Sure.

8 Q Okay. So if I --

9 A I mean we all do --

10 Q -- have -- there's a week, a week --

11 MS. TAYLOR: Objection, your Honor. If he can just
12 let the doctor finish his whole answer and then go to the
13 next question.

14 MR. SCUDERI: Okay.

15 THE COURT: I think it was inadvertent.

16 THE WITNESS: I'm sorry. I interrupted you, I think
17 on that one.

18 BY MS. SCOTT:

19 Q That's okay.

20 A Any of us who drink can have a -- a social drink, and go
21 home, and be fine, okay. I think you're much more cautious
22 now about having three drinks, and get in your car and drove
23 home after work, because you're more concerned about having a
24 buzz that causes you to get a DUI, okay. You probably deal
25 with that all the time, so that we're much more cautious.

Downs - Cross

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1 The addicted individual can't do that, because they
2 have that craving, and basically they -- they -- they have
3 the compulsion to do that. It makes them very different than
4 you and me.

5 Q And the person who has the addiction, who has the
6 craving, if he stops, he's going to have a horrible
7 withdrawal; is that correct?

8 A If he's -- if he's -- if he's got substantial drug on
9 board, that's correct.

10 Q Okay. But you can use these drugs, including alcohol,
11 and not be addicted, and not have that withdraw; isn't that
12 correct?

13 A Yes.

14 Q So, in theory, somebody could be using opioids on a
15 weekend, or just at night, and perform well enough at their
16 job the next day to not make a mistake; isn't that correct?

17 A It may not be the next day, but --

18 Q It could be any time. But I'm just saying theoretically
19 we're talking about -- you don't know these people, you don't
20 know how much they -- they may or may not have done as far as
21 drugs are concerned --

22 A It's -- you're -- you're --

23 Q -- but theoretically someone like alcohol can have a
24 drink at night, they can take a drug at night, and get up the
25 next day and go to work without experiencing the withdraw

Downs - Cross

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1 from not taking drugs the next day --

2 A The non --

3 Q -- isn't that correct?

4 A -- the non-tolerant person can do that, that's correct.

5 Q I understand. Okay.

6 MR. SCUDERI: That's all I have.

7 THE COURT: All right. I think we're at Mr. Dreyer?

8 MR. DREYER: No questions, your Honor.

9 THE COURT: Mr. Laigaie?

10 MR. LAIGAIE: Just a couple, your Honor.

11 CROSS-EXAMINATION

12 BY MR. LAIGAIE:

13 Q Dr. Downs, you would agree that opiates are used by many
14 people to control painful conditions, correct?

15 A Correct.

16 Q And you would agree that everybody who uses an opioid
17 does not necessarily move down the X axis on Downs No. 4
18 where they're -- they're taking larger and larger doses, and
19 -- and not getting the same pain relief, correct?

20 A Almost anybody who uses opiates for a period of time --
21 and I can't tell you what that time is -- will start to
22 develop a tolerance.

23 Q Okay. I believe that to be the case --

24 A Okay.

25 Q -- sure, but they don't ineluctably move down, all the

Downs - Cross

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1 way down the X axis where your very bold arrows are only
2 bringing them back to baseline, correct?

3 A That's correct.

4 Q Some do. Some don't.

5 A Some don't.

6 Q And, in fact, opioids are used for the control of chronic
7 pain in many cases, correct?

8 A Correct.

9 Q And chronic pain, if -- if I'm not mistaken, is pain
10 that's just not going to go away, correct?

11 A Okay. I agree.

12 Q Okay. Now, if someone moves along the X axis on Downs
13 No. 4, and is taking more and more of the drug and getting
14 less and less of a positive effect, do I understand your
15 testimony that at some point that person is going to manifest
16 their drug abuse in some fashion? For instance, with
17 slurring of words, or nodding out, falling asleep, that type
18 of thing?

19 A I didn't say it was drug abuse. I think what you were
20 describing was somebody dosing for chronic pain.

21 Q Okay.

22 A They would basically become tolerant, perhaps, to that
23 nodding out. But by the same token, they would become more
24 tolerant, so -- so they would need larger doses.

25 Is that the question I think you're asking?

Downs - Cross

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1 Q Okay. Well, let me try it a different way. Maybe I can
2 get to this point.

3 You mentioned that some of your best students over
4 the years, some bright students ended up being drug abusers

5 --

6 A Correct.

7 Q -- correct?

8 A Correct.

9 Q And you mentioned that invariably the students ultimately
10 did something that keyed you in, that clued you in, that,
11 Wait, this student might have a drug problem.

12 A Correct.

13 Q But, again, it's possible for somebody to use these --
14 this class of drugs for chronic pain and never get to the
15 point where it's negatively affecting their behavior in a way
16 that would clue somebody in to, Hey, maybe this person's
17 abusing this drug?

18 A Well, that's -- that's a tough question.

19 Q I'm sorry.

20 A I think if -- if you're using it for pain --

21 Q Mm-hmm.

22 A -- okay, a person who becomes dependent, they still
23 become dependent upon the drug, you still get the withdraw --

24 Q Right.

25 A -- okay. So those folks are still going to have an

Downs - Cross

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1 effect, and if they're trying to work during that period of
2 time of withdraw, that's going to be difficult for them.

3 I'm not sure that's the question you're asking --

4 Q Well, I --

5 A -- though.

6 Q -- I guess I'm not being very articulate, and I
7 apologize, but -- and with all due deference to your
8 background, you're not a medical doctor.

9 A No, I'm not.

10 Q And you don't treat chronic pain patients.

11 A No, I don't.

12 Q And, so, you don't have any personal experience in how
13 these drugs may be used over a long term to treat chronic
14 pain.

15 A Okay. I -- I have certainly worked with physicians who
16 have done that, but, no, I have no -- I do not prescribe.

17 Q Okay. 50 nanograms per milliliter, is that a dosage of
18 oxycodone that would be within the therapeutic range?

19 A Are you talking about blood levels?

20 Q Yes.

21 A I have no idea.

22 Q Okay.

23 A I'm sorry.

24 Q Fair enough. Neither do I.

25 MR. LAIGAIE: With that, that's it, your Honor.

Downs - Cross

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1 MR. O'MEARA: Thank you, your Honor. No questions.

2 THE COURT: All right. Anything further, Ms.

3 Taylor?

4 MS. TAYLOR: One question.

5 THE COURT: All right. Sure.

6 REDIRECT EXAMINATION

7 BY MS. TAYLOR:

8 Q Dr. Downs, and I don't remember which counsel asked the
9 question, but I want to talk about using drugs during the
10 work day, and withdraw symptoms and performance.

11 If I am addicted to opiates, and I am using it for
12 whatever reason, pain or whatever, at some point I build up
13 tolerance; is that correct?

14 A Correct.

15 Q Now, let's suppose I'm going to work. You indicated you
16 heard the testimony where the witnesses said they had to take
17 it in the morning, so they could get to work. And then at
18 some point during the day, they had to take it to continue to
19 work. And I believe Mr. Haux testified he had to take it in
20 the evening, so he could get through the night, so he could
21 start this cycle back over again.

22 A Right.

23 Q What happens if they can't get that drug?

24 A What usually is they will try to find a substitute drug,
25 so the benzodiazapines, the Valiums, are -- are one agents

Downs - Redirect

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1 that they'll use in order to try to tide them over until they
2 can get the drug again, or they'll withdraw.

3 Q And if they suffer the withdraw, because they cannot
4 obtain that drug, would they experience -- they experience
5 those symptoms if I'm at work, at work?

6 A Absolutely.

7 Q And can those symptoms then affect my ability to perform?

8 A Yes.

9 Q Now, take the reverse.

10 What happens -- do they -- is the chance of withdraw
11 lesser if there is, as Mr. Haux and Mr. Sullivan testified,
12 ready availability of oxycodone, Percocets, and Fentanyl?

13 A Correct.

14 Q And is that because they can get the drug to continue to
15 function until they're next dose?

16 A Correct.

17 MS. TAYLOR: I have nothing further.

18 THE COURT: All right. Doctor, thank you, and
19 especially thank you for coming down on your own time.

20 THE WITNESS: My pleasure.

21 THE COURT: We appreciate the service you've
22 provided to all the parties in the case. It was very
23 impressive.

24 (Witness excused.)

25 MS. TAYLOR: Your Honor, the Government has one last

1 witness.

2 THE COURT: All right. How long will that be?

3 MS. TAYLOR: On direct, 15 minutes.

4 THE COURT: All right. Well, why don't we take a
5 brief recess.

6 MS. TAYLOR: Very well.

7 THE COURT: We'll recess until 4:30.

8 MS. TAYLOR: Very well, your Honor.

9 THE COURT: All right. Thank you.

10 (A recess was taken from 4:16 o'clock p.m. until
11 4:26 o'clock p.m.)

12 BERNARD JONES, after having been first duly sworn as
13 a witness, was examined and testified as follows:

14 MS. TAYLOR: May I proceed, your Honor?

15 THE COURT: Of course.

16 DIRECT EXAMINATION

17 BY MS. TAYLOR:

18 Q Good afternoon, Mr. Jones.

19 A Good afternoon.

20 Q Can you tell the Court your employer?

21 A Boeing.

22 Q And how long have you been employed by Boeing?

23 A 27 years.

24 Q What is your current title?

25 A BMA, which is Boeing Military Aircraft Director of

Jones - Direct

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1 Operations.

2 Q Director of Operations?

3 A Correct.

4 Q Do me a favor, Mr. Jones, can you pull the mic closer,
5 and speak directly into it --

6 A Okay.

7 Q -- so that everyone can hear you.

8 As the Boeing Military Aircraft Director of
9 Operations, what are your duties and responsibilities?

10 A So we oversee the execution of the -- the build of all of
11 our military aircraft, platforms across five different sites.
12 I specifically have cognizant authority over three of those,
13 which is Philadelphia, Macon, Georgia, and Mesa, Arizona.

14 Q Now, previously were you site leaders for those three
15 locations?

16 A I was.

17 Q And as a site leader for those locations, what were your
18 responsibilities?

19 A Overall site responsibility, which is overseeing the
20 overall site, and all the operations at -- at the site.

21 Q So in your current position, you perform that and
22 additional duties at three separate Boeing facilities; is
23 that correct?

24 A Correct.

25 Q Are you physically located in Philadelphia?

Jones - Direct

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1 A I am.

2 Q Do you continue to oversee the production activities in
3 the Philadelphia facility?

4 A Not -- not directly, but indirectly, yes.

5 Q That person reports to you?

6 A Correct.

7 Q Okay. Have you been in Philadelphia since 2008?

8 A Correct.

9 Q And when you first came to Philadelphia, were you the
10 actual site leader at that location?

11 A Site leader and director of operations, correct.

12 Q And was that from approximately 2008 to 2010?

13 A Correct.

14 Q And after 2010, you took on these additional
15 responsibilities?

16 A That's correct.

17 Q But you were still physically working out of the
18 Philadelphia area; is that correct?

19 A Correct.

20 Q Now, are there types of occurrences at -- let's use
21 Philadelphia -- but at any one of the facilities you oversee,
22 in your experience, that could cause a negative impact in
23 productivity?

24 A Absolutely, there's a number of them.

25 Overall employee morale, absenteeism, which is

Jones - Direct

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1 tardies, leave earlies, being away from their job, accidents
2 in the work area, and then overall non-compliance to work
3 procedures and rules.

4 Q What about employees' inabilitys to perform their duties
5 due to injury, illness, or other reasons?

6 A Absolutely, it's an impact.

7 Q Now, at my request, have you prepared a chart dealing
8 specifically with the attendance issue?

9 A I have.

10 Q And, in that chart, did I request that you compare the
11 attendance of the individuals charged in this investigation
12 with the attendance of the general UAW membership?

13 A Correct.

14 Q And the UAW is United Auto Workers?

15 A Correct.

16 Q And is that the union that -- that is in effect at the
17 Boeing facility in Philadelphia?

18 A UAW 1069.

19 Q UAW 1069?

20 A Correct.

21 Q Now, in doing this, were there some individuals, I
22 believe two, charged in this investigation that were not
23 members of the UAW?

24 A Correct.

25 Q And they were not included in the chart that you're about

Jones - Direct

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1 to present to the Court; is that correct?

2 A That's correct.

3 MS. TAYLOR: Your Honor, may I have one moment?

4 (Discussion held off the record.)

5 MS. TAYLOR: Any objection to 1, 2 and 3?

6 COUNSEL: I have no objection.

7 MS. TAYLOR: Your Honor, the Government would ask
8 that we bring up on the screen Exhibit Jones, I think, 1.

9 (Pause.)

10 BY MS. TAYLOR:

11 Q And, Mr. Jones, you prepared a series of exhibits for the
12 Government; is that correct?

13 A Correct.

14 Q Is what's been marked as Jones 1, one of the pages of
15 that exhibit?

16 A It is.

17 Q Can you -- and I think you can do it from your seat --

18 A Okay.

19 Q -- can you explain to the Court what Government's Exhibit
20 Jones 1 first compares and what it demonstrates?

21 A Okay. So this was data from January 1st, 2009, through
22 September 29th, 2011, and if you look at the -- the first pie
23 chart, it shows the overall absences for the touch labor work
24 force, or UAW 1069 work force, minus the 33 defendants, and
25 that the average absence occurrence during that period of

Jones - Direct

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1 time frame was 17 percent.

2 Q And what period of time did you cover?

3 A January 1, '09, through September 29, '11.

4 Q Okay.

5 A Okay. If you look at the second pie chart having to do
6 with the 33 charged employees, it shows that their absence
7 rate was 26 percent, so a significant difference.

8 If you look at the -- the bottom bar graph you can
9 see how the attendance rate again, the -- the blue bars are
10 the overall population minus the 33 defendants, and the red
11 bar is those defendants. You can see how it really started
12 escalating from 2009 through 2011, whereas the general
13 overall population remained relatively flat, around 17
14 percent. There was somewhat of a spike in -- in '10, but
15 going back and looking at the fluctuation from 16 to -- to
16 18, you know, in '10, we had a significant number of
17 inclement weather days with ice and snow in '010, and that's
18 reflected.

19 Q Now, in your two -- I guess they're the pies -- that's an
20 average of all three years; is that correct?

21 A Which one? I'm sorry. Yes.

22 Q It's the pie chart that shows the workers --

23 A Correct.

24 Q -- at 17 percent, charged employees at 26 percent.

25 A That's correct.

Jones - Direct

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1 Q And then you break it down by year on your numbers
2 showing how you reach your average?

3 A Correct.

4 Q And in arriving at this chart, did you examine the same
5 categories for the work force that you examined for the
6 charged defendants?

7 A All the -- all the data is an apples-to-apples
8 comparison.

9 Q And does that mean that you also included for -- for the
10 work force, and the charged defendants, any time that they
11 took for vacation?

12 A That's correct.

13 Q And any time that they took for sick leave?

14 A Correct.

15 Q So that this chart represents their time away from the
16 company?

17 A Correct.

18 Q And that would be the entire work force and all of the
19 defendants?

20 A Both groups.

21 MS. TAYLOR: If we can turn to Page 2, please?

22 (Pause.)

23 BY MS. TAYLOR:

24 Q And do you have Page 2 in front of you, sir?

25 A I do.

Jones - Direct

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1 Q Now, this Page 2 is entitled, "Work Force Absence
2 Trends"; is that correct?

3 A That's correct.

4 Q And what do you see to indicate in this chart?

5 A So the trend really starts to worsen with -- with the
6 more involvement, so the -- the three bars are -- again, the
7 first bar is representative of the overall UAW work force.
8 That's 17 percent. The Government did supply a list of
9 others that are the POI group.

10 Q And POI, is that persons of interest?

11 A Persons of interest group.

12 Q And are those individuals who are currently under
13 investigation by the Government?

14 A I do not know that.

15 Q Did the Government supply those names to you as
16 individuals that we had an investigative interest in?

17 A Yes.

18 Q And then the other group is the actual charged
19 defendants; is that correct?

20 A Correct.

21 Q Now --

22 A So the 26 percent matches the pie chart on the first
23 slide, but you can see the POI group really steps up from the
24 average population, and, again to the 26 percent.

25 Q And that's why you indicate trend worsens with more

Jones - Direct

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1 involvement?

2 A Correct.

3 Q Now, does the -- just so we're clear -- when you averaged
4 out the UAW workers, you did not include the POIs, or the
5 defendants, or did you?

6 A Could you ask that one more time?

7 Q Sure. In your analysis, did you take the POIs, as well
8 as the charged defendants, out of the equation before you
9 averaged in the numbers that you represent as UAW?

10 A On -- on the first chart they -- they are in there.

11 Q They are in there?

12 A They are in there.

13 Q So you understand --

14 A In -- in the overall --

15 Q -- what I'm saying?

16 A -- in the overall UAW population.

17 Q So when you use -- let's go back to the first chart.

18 So in your first chart -- let's use 2009 -- the blue
19 are the charged defendants, correct?

20 A The red.

21 Q Oh, I'm sorry. The red is the charged defendants.

22 A Correct.

23 Q The blue are all UAW defend -- workers including the
24 charged defendants?

25 A That's correct.

Jones - Direct

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1 Q So their numbers are included in the overall UAW number?

2 A That's correct.

3 Q So when we turn to Page 2, to the persons of interest to
4 the Government, are also included in the overall number for
5 the UAW?

6 A That's correct. If I were to subtract that out, the UAW,
7 the overall represented would be lower.

8 Q Would be lower?

9 A Correct.

10 MS. TAYLOR: If we could turn to Page 3?

11 (Pause.)

12 BY MS. TAYLOR:

13 Q Now, Page 3 is entitled "Work Force Absence Data for
14 Defendants," again, January 2009, through September 28, 2011;
15 is that correct?

16 A Correct.

17 Q And there are four individuals who are highlighted on
18 that chart; is that correct?

19 A Correct.

20 Q And are those the individuals -- well, I'll just ask you
21 who they are.

22 Are they Andrew Stanley Duris, Jr.?

23 A Correct.

24 Q Michael Thomas Patterson?

25 A Correct.

Jones - Direct

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1 Q Victor Quinto Phillip?

2 A Correct.

3 Q And James Swan?

4 A Correct.

5 Q And on this chart you show the categories you use in
6 order to achieve the percentages that are shown in the
7 earlier charts; is that correct?

8 A Correct.

9 Q One of the categories is "Percent of Days Late," or
10 "ABS"; is that absent?

11 A Correct.

12 MS. TAYLOR: And if you could just focus on that,
13 please?

14 SPEAKER: (Inaudible).

15 MS. TAYLOR: Yes. A little bigger. That didn't
16 help me. It may be as good as it's going to get, I don't
17 know.

18 SPEAKER: Yes.

19 BY MS. TAYLOR:

20 Q Can you see those numbers clearly on your --

21 A I can on -- on my paper copy.

22 Q Okay. What's Mr. Duris's percentage of days late or
23 absent?

24 A 24.4 percent.

25 Q What was Mr. Patterson's?

Jones - Direct

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1 A 21 percent.

2 Q Mr. Phillip?

3 A 38.7.

4 Q And Mr. Swan?

5 A 31.2.

6 Q Do you know or are you familiar with something called a
7 corrective action?

8 A I am.

9 Q And tell the Court what a corrective action is.

10 A A corrective action is formal documentation that any
11 employee may receive documenting non-compliance with company
12 rules or company procedures.

13 Q And I want to show you what we're marking as Swan 1 and
14 2, which is (inaudible).

15 (Pause.)

16 I want to show you what's been marked as Government
17 Exhibit Swan 1, and Government Exhibit Swan 2.

18 (Pause.)

19 Are those examples of a corrective action memos?

20 A They -- they are.

21 Q And are those corrective action memos against James Swan?

22 A They are.

23 Q Can you tell the Court the date of the memo and the
24 corrective action?

25 A The date of action on Exhibit 1 is 10/25/10, and this is

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1 failure -- it's a violation of company rule failure to
2 comply.

3 Q And what specifically -- why specifically is he given a
4 corrective action?

5 A A corrective indicates that he failed to buy off
6 operations on a specific job that he was doing, a specific
7 part number. By failing to buy off the job, he prevented
8 quality from buying off the job, which caused a delay in the
9 process.

10 Q And what does that mean in layman's terms?

11 A In layman's terms it means every time a -- a job is
12 completed, the person that completes that job stamps it off
13 with their stamp, signifying that they performed that -- that
14 job, and that -- but quality cannot come in and inspect the
15 job until that -- that's completed.

16 Q And, so, what delay did Mr. Swan's actions cause?

17 A I don't know the specific delay, but it -- it's evident
18 here from the corrective action that it caused delays in --
19 in the process. It could have been --

20 Q I don't want you to speculate.

21 A Okay.

22 Q I'm not asking you to speculate.

23 Whatever he did not do to cause the delays he
24 received a corrective action?

25 A Correct.

Jones - Direct

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1 Q What is the second one? Was that Swan 1, sir?

2 A That was Swan 1.

3 Q What is Swan 2?

4 A Swan 2 is dated 2/14/11, and this one is for demonstrated
5 unsatisfactory attendance by failing to comply with the site
6 practices. He received a written warning for attendance.
7 Previously, on 7/26/10, since that time, it indicates he had
8 the following absences; partial days on 9/2/10, 9/21/10,
9 11/5/10, 11/19/10, and 2/7/11, and full day absences of
10 11/8/10, 2/6/11, and 2/8/11, which is a violation of pro
11 5097, attendance standards.

12 Q Have you had an opportunity, at my request, to compare
13 the corrective actions issued against the 33 UAW member
14 defendants in this case versus the overall UAW population?

15 A I have.

16 (Discussion held off the record.)

17 MS. TAYLOR: I'm sorry, your Honor. May I have a
18 moment?

19 THE COURT: Yes, sure.

20 (Discussion held off the record.)

21 MS. TAYLOR: If we could turn -- oh, you're already
22 there. Impressive.

23 BY MS. TAYLOR:

24 Q What have we placed on the monitor, sir?

25 A So this is the number of corrective actions, again, for

Jones - Direct

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1 the total UAW work force minus the defendants, and the second
2 bar there is just for the defendants. So, in summary, 17 of
3 the 33 defendants were issued one or more corrective actions
4 in that same time period of 1 January '10, through 9/20/11,
5 which is 52 percent of the population.

6 We also looked at the data all up across the -- the
7 UAW work group and the comparison is 15 percent at the all
8 up, so a significant increase there. So 47 corrective
9 actions against the 33 defendants, so on average 1.4
10 corrective actions per employee.

11 Q And, so, some of the total of 33, 17 got corrective
12 actions?

13 A Correct.

14 Q And just so we're clear, as to the four defendants in
15 this courtroom, only Mr. Swan had a corrective action?

16 A I would have to go back and look at the data.

17 Q Well, that's the only one that I've -- I've demonstrated
18 --

19 A Okay.

20 Q -- to you; is that correct?

21 A Yes.

22 Q Now, could an employee have more than one corrective
23 action?

24 A Absolutely.

25 Q And that accounts for the fact that you have 47 over 17

Jones - Direct

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1 employees; is that correct?

2 A Correct.

3 Q And I want you to turn to the next page.

4 THE COURT: What exhibit was that? The one we just

5 --

6 MS. TAYLOR: That's Jones 1 -- I'm sorry.

7 THE COURT: No.

8 MS. TAYLOR: I thought I was answering your
9 question.

10 THE COURT: 4?

11 MS. LUNKENHEIMER: It's all been marked as 1. Your
12 Honor, it's all been --

13 MS. TAYLOR: It's all Jones 1 collectively. There
14 are eight pages.

15 THE COURT: Okay.

16 THE WITNESS: So the next chart we looked at,
17 "Recordables", which in our definition is any entry that
18 results in medical treatment that goes beyond first aid and
19 meets the general recording criteria of time off the -- the
20 job, and this one is pretty alarming, too. It shows for the
21 general or total UAW work force, minus the defendants, a 21
22 percent recordable occurrence rate, and 46 percent for the --
23 the defendant population, again, over that same time period
24 of January 1, '09, through September 29, 2011.

25 BY MS. TAYLOR:

Jones - Direct

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1 Q And the recordables would be as little as one incident
2 per person; is that correct?

3 A Correct.

4 Q Now, in this number, could it also mean that one person
5 had more than one recordable?

6 A It could.

7 Q So it is the number of incidents, not the number of
8 individuals?

9 A Yes.

10 Q Right?

11 And you compared that percentage to the total number
12 of the 33 --

13 A That's correct.

14 Q -- charged defendants; is that correct?

15 A That's correct.

16 Q Now, when you have a recordable safety occurrence, they
17 had to have been referred to medical in order to make your
18 chart; is that correct?

19 A Correct.

20 Q In order to be considered, there was a referral to
21 medical?

22 A Right.

23 Q Would the employee file indicate whether, on that
24 referral to medical, it was for a drug test?

25 A Not -- not in the records that I see, no, but if -- if

Jones - Direct

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1 somebody -- if somebody was -- if a manager had cause in a --
2 in an accident, and it met the -- the guidelines, they --
3 they would request that the -- the person be tested. But
4 just because it was a recordable, does not mean that the
5 person was tested.

6 Q And do you have access to any records that would show
7 whether or not that employee, on any of these occurrences,
8 whether it's UAW, or the separate defendants, that recordable
9 resulted in a referral to medical for a drug test?

10 A I --

11 Q Do your files show that? Do the employee files show
12 that?

13 A Yes.

14 Q They do show that?

15 A If -- if -- if a manager request that an employee be
16 tested?

17 Q Yes.

18 A So I -- what's in the file? I guess I'd have to refer to
19 HR, because I -- I'm --

20 Q Okay.

21 A -- not --

22 Q Okay. So you don't know what's in the -- the employee
23 file?

24 A Correct.

25 Q But certainly if a manager requested that an employee be

Jones - Direct

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1 tested, that is recorded somewhere?

2 A Right.

3 Q Okay. As the person responsible for the production at --
4 I guess you'd call it BMA, the Boeing Military Aircraft -- do
5 you believe that drug-impaired employees negatively impact
6 the goals of that facility?

7 A Absolutely.

8 Q Why?

9 A The data here shows specifically that they're much more
10 likely to be involved in an accident, which could mean --

11 MR. SCUDERI: Your Honor, I'm going to object, as
12 lack of foundation, or it can go to the weight.

13 I don't know. The fact that these people are
14 charged with drugs, does not mean that other people are not
15 using drugs, so I don't know if he's using a statistical
16 base, which is flawed. I --

17 THE COURT: Well, it goes to weight, doesn't it?

18 MR. SCUDERI: Okay.

19 BY MS. TAYLOR:

20 Q I'm not asking you just to rely on the -- let me reask my
21 question, because I'm not limiting my question to your chart.

22 A Okay.

23 Q As the person responsible for production at that
24 facility, do you believe that drug-impaired employees,
25 charged or not, negatively impact the goals of that facility?

Jones - Direct

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1 A Yes, I do.

2 Q And tell the Court why.

3 A Because we -- we rely on all of our -- we rely on
4 first-time quality on all of our -- our products, be it --
5 it's been mentioned several times today, design engineers, be
6 it production workers. We rely on first-time quality in
7 every one of those jobs, and I heard it stated before that
8 drug-impaired employees are not capable of doing the same job
9 as those that -- that are not impaired.

10 Q Do they increase, in your experience, the risk of
11 accidents?

12 A Absolutely.

13 Q Does that slow down productivity?

14 A It slows down productivity a lot.

15 Q You're familiar with the different jobs on the
16 manufacturing side that go into servicing an aircraft at
17 Boeing, servicing and manufacturing the aircrafts that Boeing
18 produces.

19 Q Correct.

20 Q Is there a position, in your opinion, in that
21 manufacturing process that is not critical to production?

22 A All of our jobs are critical. They require
23 certification, they require quality buy offs, there are some
24 jobs that are more critical than -- than others, but they are
25 all critical to the safety of our -- our war fighters and the

Jones - Direct

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1 -- the platforms that we -- we build for them.

2 Q Now, are there ramifications -- well, let me step back
3 for a second.

4 As director of operations, does Boeing have quality
5 assurance policies and procedures in effect?

6 A Absolutely.

7 Q And, first of all, what is the purpose of your quality
8 assurance policies and procedures?

9 A To assure that our products meet the design
10 specifications that we deliver -- that we need to deliver to
11 the customer.

12 Q And do your quality assurance policies and procedures,
13 are they in place in order to make sure that what is shipped
14 out is what the customer ordered?

15 A Correct.

16 Q How, if at all, do your quality assurance policies and
17 procedures account for error?

18 A Well, there's a lot of redundancy in the inspection
19 process. There's --

20 Q Explain to the Court what that means.

21 A So there's redundancy in it from the standpoint that most
22 of our jobs have a -- a -- the mechanic that does the job,
23 stamps it off, and a quality inspector stamps it off, and
24 then the customer actually has inspectors on site that stamp
25 off a portion of the jobs, not all of the jobs, but a portion

Jones - Direct

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1 of them. So that's the -- the redundancy in the system. We
2 do a lot of functional tests on -- on the airplanes that are
3 also designed to test for non-conformances in the system.

4 Q And what happens if something isn't right?

5 A It has to be reworked. It's very costly. It impacts the
6 schedule on -- on the line, and ultimately could impact
7 delivery of the platforms that the war fighters need.

8 Q And have there been occasions where you've had to do
9 rework?

10 A All the time.

11 Q And when you have to do rework, do you -- are you able to
12 -- that's just not the right...

13 Do you have the ability, at your plant, to trace a
14 specific issue to a specific worker generally?

15 A We -- we do not track non-conformances down to the
16 employee level.

17 Q You --

18 A We do it --

19 Q Go ahead.

20 A -- at some sites, but at this particular site, our
21 systems are not that -- that robust --

22 Q Okay.

23 A -- to be able to track it down to the individual employee
24 level.

25 Q So when you find a problem, you fix a problem?

Jones - Direct

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1 A Yeah, we try to do --

2 Q But you can't --

3 A -- what we call a root cause, a corrective action. We --
4 we -- look for the root cause of it and try to drive it back
5 to the area, but not necessarily to the specific employee.

6 Q Okay. And then you use the redundancy to make sure that
7 the quality or the product is shipped to the customer?

8 A Correct.

9 Q Now --

10 THE COURT: Why is -- excuse me.

11 MS. TAYLOR: Okay.

12 THE COURT: Why can you do it at other places and
13 not at Ridley?

14 THE WITNESS: It just has to do with the different
15 electronic IT systems that -- that we have. This particular
16 site, for example, we're introducing a new suite of systems,
17 common systems that will be in place in October of this year,
18 but we just don't have that common suite systems in place.

19 Once --

20 THE COURT: So you will have it?

21 THE WITNESS: We will have it, yes, sir.

22 THE COURT: Just on this thing that's on the screen
23 here, there's four gentleman that we're focusing on
24 particularly today, Mr. Duris, Mr. Swan, Mr. Patterson, Mr.
25 Phillip, are their or do they have any instances of safety

Jones - Direct

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1 record problems that are included in that 40 -- I can't read
2 it -- what is it, 40 percent?

3 THE WITNESS: Sir, I -- I don't specifically have
4 that backup data with me.

5 THE COURT: Do you know, Ms. Taylor?

6 MS. TAYLOR: I do not, your Honor. I will supply
7 that to the Court, though.

8 THE COURT: Okay.

9 MS. TAYLOR: The absence of presence.

10 THE WITNESS: I have it, I just -- we had to have it
11 --

12 THE COURT: Okay.

13 THE WITNESS: -- build the chart by it --

14 THE COURT: I just wanted it. I understand.

15 THE WITNESS: -- but I don't have it with me.

16 BY MS. TAYLOR:

17 Q Mr. Jones, should that -- when you get back to your
18 office if you could forward that to me, I'll forward it to
19 the Court --

20 A Will do.

21 Q -- and counsel.

22 THE COURT: You know, and also for any of the 13
23 that are going to be coming up --

24 THE WITNESS: Okay.

25 THE COURT: -- if there's --

Jones - Direct

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1 MS. TAYLOR: We'll do it for the entire --

2 THE COURT: Yes, if there's people who --

3 MS. TAYLOR: -- yes, we'll do it --

4 THE COURT: -- were involved --

5 MS. TAYLOR: -- for that entire population.

6 THE COURT: -- in any of these, I'd like to know
7 that.

8 MS. TAYLOR: Very well, your Honor.

9 BY MS. TAYLOR:

10 Q What are the ramifications --

11 MS. TAYLOR: And this is my last question, your
12 Honor.

13 BY MS. TAYLOR:

14 Q -- what are the ramifications to Boeing, and its
15 customers, if your product is not quality?

16 A So it impacts our reputation, it impacts the -- the
17 Boeing brand. Right now we're going through significant
18 issues with Department of Defense budgets, and it's all about
19 delivery of -- meeting your -- your contractual commitments,
20 it's about the reputation that you have, and these type of
21 things impact the reputation that -- that we have with --
22 with our customers.

23 Q Do they impact your ability to meet your production
24 deadlines?

25 A If we have a lot of absenteeism, a lot of non-

Jones - Direct

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1 conformances, a lot of safety, absolutely, it impacts.

2 Q What about if you just discover more issues that you have
3 to correct --

4 A The --

5 Q -- does that impact production?

6 Q Those are the non-conformances that are described,
7 absolutely.

8 Q What about the impact to your customer?

9 A Well, you know, a Chinook -- the products that we build,
10 it's not -- not to make light of stocking shelves at Walmart
11 -- but -- but these are platforms that take soldiers into
12 harm's way and bring them home every day. They -- they rely
13 on these products. You can't stop a Chinook at 10,000 feet,
14 pull it over on the side of the road, because there's a -- a
15 defect and -- and fix it. Airplanes -- when airplanes crash,
16 airplanes kill people.

17 And, no, to answer the question, can I significantly
18 tie any defect back to any of these 33 today? No, I can't.

19 Q What has been the military range of response when there
20 are issues with the aircrafts you deliver?

21 A So there's been aircraft -- entire fleets that have been
22 grounded, because of safety issues. Every time there's an
23 occurrence of a -- of a defect, the customer has a Safety
24 Board that reviews it, and determines the level of safety up
25 to and including grounding the -- the fleet. It could be

Jones - Direct

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1 that it has flight restrictions from -- from the base that
2 its operating on, until that non-conformance can -- can be
3 fixed or until we can found what aircraft the -- the problems
4 are on, and a lot of the times we, the Boeing Company, has
5 to, at our expense, send people out into the field to make
6 the -- these repair on these aircrafts.

7 MS. TAYLOR: Your Honor, I have nothing further of
8 this witness.

9 MR. SCUDERI: May I, your Honor?

10 THE COURT: Yes, I have a question first, if you
11 don't mind; is that all right?

12 MR. SCUDERI: Okay.

13 THE COURT: I'll try not to steal yours.

14 (Laughter.)

15 This rework after there's a problem, can you
16 identify whether that increased or decreased after the
17 arrests were made here in 2011?

18 THE WITNESS: Well, sir, that's what I was referring
19 to. Because our non-conformance system at this site, it's --
20 it's not as robust as it is at some of the others, so we do
21 not track non-conformances down to the employee level.

22 THE COURT: Okay. But how about generally? After
23 the arrests, did you notice any improvement or change in the
24 number of quality issues?

25 THE WITNESS: I -- I can't say that I've looked at

Jones - Direct

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1 that data. I mean all and all, our trends for performance
2 and quality have been getting better throughout this year.

3 THE COURT: Let me get back to the drug testing
4 question that I've asked a couple people, and maybe you're
5 the person, I don't know.

6 Way is it, if prescription drug abuse is such a
7 problem at the Boeing plant, the company -- you're the
8 Director of Military Operations or I've forgotten --

9 THE WITNESS: Operations.

10 THE COURT: -- Director of Operations for Military
11 Aircraft, why wasn't there an aggressive move made with the
12 UAW to renegotiate that contract provision to address that
13 and allow for more randomized testing?

14 THE WITNESS: So part of the answer is we -- we were
15 not aware how big the problem was --

16 THE COURT: Well, Mr. Fasold was.

17 THE WITNESS: -- and, secondly, as we did find it,
18 we have been working with their corporate headquarters on --
19 on this particular issue --

20 THE COURT: But that's --

21 THE WITNESS: -- until we got the -- got the panel
22 expanded.

23 THE COURT: I mean that was four or five years.

24 THE WITNESS: I haven't -- I haven't been in
25 Philadelphia that long, but we -- we've been working it with

Jones - Direct

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1 the corporation, and like Dave Bouse testified, it's -- it's
2 enterprise-wide and we have to work it at -- at the
3 individual sites with the individual represented contracts
4 that we have.

5 THE COURT: Okay.

6 THE WITNESS: But it is a concern to us.

7 THE COURT: Okay. Thank you.

8 MS. TAYLOR: I have no further questions. I was
9 just standing here in case --

10 THE COURT: How did I do?

11 MS. TAYLOR: -- I had questions --

12 THE COURT: Did I steal any of your questions?

13 MS. TAYLOR: -- based on yours.

14 MR. SCUDERI: Yes, just one. Actually, two.

15 THE COURT: Well, I hope I didn't mess them up.

16 CROSS-EXAMINATION

17 BY MR. SCUDERI:

18 Q Sir, is this problem with substance abuse, just
19 restricted to Boeing Ridley Park?

20 A I'm sure we have -- we have substance abuse at the other
21 sites.

22 Q Well, are there investigations at other sites?

23 A Not that I'm aware of.

24 Q Okay. This redundancy --

25 A Are you talking external investigations?

Jones - Cross

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1 Q Criminal, yes, criminal?

2 A Not that I'm aware of.

3 Q Okay. This redundancy of inspection of parts, is that
4 just performed at Boeing Ridley Park or is that all over the
5 country?

6 A It's in every aircraft facility.

7 Q Okay. If everybody at Boeing Ridley Park were sober, and
8 had never done drugs, would you still have that redundancy
9 checking?

10 A It might eliminate some of it, yes. We -- we do process
11 surveillance where if a -- if a job is performed
12 successfully, without non-conformances over a period of time,
13 we back some of the inspection requirements out of it, and so
14 does the Government.

15 Q Okay. Can you relate non-conforming parts to alcohol or
16 drug abuse?

17 A Not directly. I -- I think it's obvious that people that
18 are impaired don't have the same hand-eye coordination, or --
19 or adherence to policy and procedure, which I think is
20 evident from the -- the chart that I showed earlier.

21 Q Isn't there a way of backtracking where a certain part
22 was manufactured within the plant at Boeing?

23 A Where it was, yes.

24 Q Where it was manufactured; is that correct?

25 A The -- the work area? Yeah.

1 Q In which shop the work area?

2 A Mm-hmm.

3 Q And within that work area, can't they tell which employee
4 worked on the part?

5 A Yeah, you can go back and look at the -- the individual
6 jobs, but a lot of times non-conformances is -- aren't --
7 aren't that easy to -- to track.

8 Q But, in theory, you could go back and say, Here's a piece
9 of composite, and it was manufactured by Victor Phillip, or
10 it was inspected by Victor Phillip; isn't that correct?

11 A Correct.

12 Q Do you have any evidence with you today that any part
13 that any of these people worked on was non-conforming?

14 A No, I do not.

15 Q Okay. Now, can you take half a vacation day?

16 A You can.

17 Q Can you?

18 A Yes.

19 Q Can you take an hour of vacation day?

20 A It depends on what it's for.

21 Q Okay. Are there -- so can I take -- can I use an hour
22 for vacation, let's say, if I had a family emergency?

23 A If it's preapproved, yes.

24 Q Preapproved?

25 A Yes.

Jones - Cross

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1 Q Preapproved. Okay. So the longer you stay at Boeing, do
2 you get more vacation?

3 A Correct.

4 Q And if you're there for over 20 years, you get four weeks
5 vacation?

6 A That's correct.

7 Q Now, to your understanding, Victor Phillip was never
8 written up for absences?

9 A That's correct.

10 Q Okay. Now, and that would be in his permanent record
11 somewhere, correct?

12 A As Dave Bouse testified, it gets pulled out of the
13 records after ten months.

14 Q At some point?

15 A Ten months.

16 MS. TAYLOR: Ten months.

17 BY MR. SCUDERI:

18 Q Oh, ten months. So you don't really know if he was -- he
19 might have a million corrective action reports.

20 You're telling me that Boeing does not keep records
21 more than ten months?

22 A For the -- per the UAW 1069 contract, that's correct.

23 Q Well, in theory, you have Victor Phillip, that he was --
24 when you are talking about late, or misses work, or absences,
25 you're including vacation time; is that correct?

Jones - Cross

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1 A In -- in -- it was an apples-to-apples comparison across
2 the entire work force, yes.

3 Q Okay. So, in theory, if I have four weeks vacation, and
4 I take an hour for 60 days in a row, I'm just using up 60
5 hours, but it shows up as a day absent, 60 days absent; isn't
6 that correct?

7 A A partial.

8 Q A partial.

9 A Yeah.

10 Q And on your chart here you have partial, it says "Number
11 of Full, Partial Day Absences."

12 I'll show you this.

13 (Pause.)

14 A Correct.

15 Q Is that your chart?

16 A Yes.

17 Q So it would mean that Victor Phillip was absent for 80
18 days, correct?

19 A It means that those 60 hours that you talked about, 60
20 days --

21 Q Right.

22 A -- that he took an hour --

23 Q Right.

24 A -- that impacted the production line.

25 Q Okay.

Jones - Cross

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1 A Because there's --

2 Q I'm not asking you that question.

3 A -- not a manager --

4 Q I'm not asking that question.

5 A Okay.

6 Q I'm just asking you whether that shows up as a day absent
7 or late --

8 A It --

9 Q -- on your chart?

10 A Any -- I said earlier -- any tardies, and any leave
11 earlies, or any full day absences.

12 Q And vacation day absences?

13 A Any.

14 Q Any. Okay. Any.

15 A Any.

16 Q So you're agreeing with me?

17 A Right.

18 Q In theory, he could have gotten approval for 60 one-hour
19 days and it shows up as 60 days out?

20 A Correct.

21 Q And for that, at least for the ten months, there has been
22 no corrective action taken against Victor Phillip; is that
23 correct?

24 A Per the documents, that's correct.

25 Q Now, did the Government ask you to look at the rest of

Jones - Cross

180

1 the work force, the non-union work force, and see about their
2 absences?

3 A The rest of the non -- the salaried-exempt employees?

4 Q All right. At Ridley Park there are 6,000 employees.

5 A Correct.

6 Q They're 1900 in the union.

7 A Right.

8 Q You know about the EAP Program, correct?

9 A I do.

10 Q And you know that also non-union people are in the EAP
11 Program.

12 Did you examine their work habits, whether they were
13 absent a lot?

14 A We -- we do look at that, yes.

15 Q But it's not in this chart?

16 A It's not -- it's not in that chart, because we don't
17 track attendance for salaried-exempt people, the same way
18 that we do for non-exempt employees.

19 Q And were any of those people arrested?

20 A Two.

21 Q Were any non-union people arrest?

22 A Two.

23 Q Two. Okay. Now, about the CARs, the corrective action
24 reports.

25 A Mm-hmm.

Jones - Cross

181

1 Q Did you break down who received the reports as far as
2 seller versus buyers or narcotics?

3 A No, I do not have that information.

4 Q Okay.

5 MR. SCUDERI: No further questions.

6 CROSS-EXAMINATION

7 BY MS. SCOTT:

8 Q Good afternoon, Mr. Jones.

9 A Hello.

10 Q Sir, you indicated that you actually oversee three
11 individual sites for Boeing; is that right?

12 A Correct, cognizant authority on those.

13 Q Did you bring any charts that compared the absences of
14 employees for Ridley Park, as it relates to those other two
15 sites?

16 A I did not.

17 Q And do you have any charts, or any information, as to the
18 inability to meet contractual deadlines comparing Ridley Park
19 to the other two sites that you oversee?

20 A Are you asking if I have information on it or -- or can
21 --

22 Q Did you bring any charts or documentations --

23 A I do not have --

24 Q -- with you here today?

25 A -- I do not have charts for that.

Jones - Cross

182

1 Q You spoke about corrective action reports that were given
2 to Mr. Swan.

3 Do you still have those in front of you, sir?

4 A I do.

5 Q And the first one was actually given on October 25th,
6 2010, where Mr. Swan failed to comply with a company rule
7 related to a buy off operations process; is that right?

8 A Correct.

9 Q And you testified that you were not sure exactly what had
10 been done at that time, but that he, in some way, failed to -
11 - to conform with the company policy; is that right?

12 A Correct.

13 Q It's fair to say that there are a number of employees who
14 receive the CARs, right?

15 A Correct.

16 Q Many of whom are not the subject of Government
17 investigations, right?

18 A Mm-hmm.

19 Q Many of those who are not the subject of Government --
20 Government investigations who receive repeated CARs; is that
21 right?

22 A Correct.

23 Q So you certainly can't testify today that that CAR back
24 on October 25th, 2010, was somehow related to Mr. Swan's use
25 of opiates; is that right?

1 A I cannot.

2 Q And, in fact, you don't even know whether he was using
3 opiates back on October 2010?

4 A I do not.

5 Q Ms. Taylor showed you the -- what's been marked as Jones
6 1. I think it was Page 3.

7 Do you have that still in front of you? That's the
8 list of defendants with four highlighted areas for the four
9 defendants that are related to this case.

10 A Correct.

11 Q And one of those individuals is my client, James Swan.

12 A Correct.

13 Q You highlighted Mr. Swan because he had 31 percent
14 absentee -- absenteeism; is that right?

15 A Correct.

16 Q Going back to 2011, the notation is that there were 107
17 absences in 2011; is that right?

18 A Correct.

19 Q Does that also include the days that Mr. Swan was
20 suspended without pay after his arrest in this case?

21 A I don't -- I do not believe so.

22 Q Okay. Back in 2010 -- or you said you don't believe so.

23 Do you --

24 A Well, it's through September, the end of September 2011.

25 Q Okay.

Jones - Cross

184

1 A So it would not include those if it was after that.

2 Q Okay. 2010, you indicated that there were 62 either
3 partial or full day absences.

4 A Correct.

5 Q Are you aware that Mr. Swan suffered from carpal tunnel
6 syndrome?

7 A I -- I am not.

8 Q Then you also are not aware that he was using many FMLA
9 and sick days related to that carpal tunnel?

10 A I am not.

11 Q So certainly, in your calculations, there is no --
12 there's no breakdown as to what the sickness, or what the
13 illness, or what the absence was for?

14 A Correct.

15 Q So then you're also not aware that in 2009, Mr. Swan was
16 out of work for six weeks after a bike accident?

17 A I am not.

18 Q So all you have are the numbers, not anything behind the
19 numbers?

20 A Correct.

21 Q You spoke about the quality control at the Ridley plant
22 being affected by perhaps the number of absences or perhaps
23 drug use.

24 Do you have anything that compares what the level of
25 quality control was at Ridley Park versus the other two

Jones - Cross

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1 plants that you oversee?

2 A I do. I don't have the data in front of me, but, yes, I
3 have that data.

4 Q But not here today with you?

5 A Correct.

6 MS. SCOTT: I have no further questions.

7 THE COURT: Do you know it off the top of your head?

8 THE WITNESS: The -- what we call the cost of rework
9 repair and scrap is higher in Philadelphia than it is at the
10 other two sites that she was asking about.

11 BY MS. SCOTT:

12 Q Do the other two sites also produce the Chinook and
13 Osprey Helicopters?

14 A One -- one site, Mesa, produces the Apache -- attack
15 helicopter, the H-6I, and a number of proprietary programs.

16 Q So they are not necessarily the same products?

17 A It's not the same product.

18 Q At least for that one?

19 A It's not the same product.

20 MS. SCOTT: I have no further questions.

21 MR. DRYER: No questions, your Honor.

22 THE COURT: All right.

23 MR. LAIGAIE: Just a couple, your Honor.

24 CROSS-EXAMINATION

25 BY MR. LAIGAIE:

Jones - Cross

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1 Q Since it's on the screen, I'm going to ask you some
2 questions about Page 3 of Jones 1, the spreadsheet.

3 A Okay.

4 Q Boeing employees who have worked for more than 20 years
5 get 20 days a year of vacation, correct?

6 A Correct.

7 Q And employees who have worked from one to nine years get
8 ten days vacation?

9 A Correct.

10 Q And employees who have worked ten to 19 years get 15 days
11 vacation, correct?

12 A Correct.

13 Q Okay. And what you've done here is tabulated the total
14 number of vacation days and sick days taken by this group,
15 and compared it to the total vacation and sick days taken by
16 the entire union population, correct?

17 A Partial and full day absences, correct.

18 Q Okay. And, so, I note that 22 of the 33 people listed on
19 this chart have 20 plus years of service.

20 Do you agree with me on that?

21 A I haven't made the calculation, but I assume you're
22 right.

23 Q Okay. Did you adjust the entire population for the fact
24 that this population, two-thirds of these people get 20 days
25 of vacation a year allotted to them? Did you adjust that

Jones - Cross

187

1 with the rest of the population --

2 A I have not.

3 Q -- to normalize it?

4 A I have not.

5 Q And if the entire population had fewer people with 20
6 years of experience, it would have -- these would be skewed,
7 the number of days taken would be skewed higher.

8 Would you agree with me?

9 A Yup, we have a very senior work force across the board.

10 Q Well, is it -- is it your understanding it's consistent
11 with your overall work force that 60, nearly 70 percent of
12 the workers have 20 years of service?

13 A That's a -- a little higher, but --

14 Q It seems high --

15 A Yes --

16 Q -- yes.

17 A -- but we have senior, a very senior work force on
18 average.

19 Q Okay. Now, let me make sure I understand what you're not
20 testifying to.

21 You're not testifying that the V-22 has quality
22 problems, are you?

23 A Nope.

24 Q It's a good aircraft, right?

25 A Yup.

Jones - Cross

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1 Q And the Chinook, it's been in service for 50-plus years,
2 correct?

3 A Correct.

4 Q It's a good quality aircraft.

5 A It's only as good as -- as the way it's built.

6 Q I hear you, but it's built well, correct?

7 A Yes.

8 Q You agree with Secretary of State Clinton, when she says
9 that the V-22 Osprey has an excellent safety record, don't
10 you?

11 A I do.

12 Q Now, I know that you can't track every piece of work done
13 by every production employee. We've talked about that some.

14 My client, Mike Homer, is an inspector of final
15 assembly. In fact, Boeing can, at the Ridley Park, track
16 every piece of work that my client, Mike Homer, signs off on,
17 can it?

18 A It can go back to -- as an inspector, he can go back and
19 look at all of his inspection records, correct.

20 Q And if there were a problem with something that Mike
21 Homer did, Boeing could track back to, Wait a minute, Homer,
22 we had a problem with this failure in the field, and you
23 signed off on it, correct?

24 A If we did the manual due diligence on each and every --
25 each and every non-conformance across the board, yes.

Jones - Cross

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1 Q Well, okay. And certainly you're aware that when there's
2 a field failure, be it combat, or be it testing, there's an
3 extreme amount of scrutiny placed on what happened and why?

4 A Correct.

5 Q And no problem with the Chinook, no problem with the
6 V-22, has ever come back to something that Mike Homer did
7 incorrectly, correct?

8 A I cannot answer that.

9 MR. LAIGAIE: No further questions, your Honor.

10 THE COURT: All right. Mr. O'Meara?

11 MR. O'MEARA: Thank you, your Honor. I have no
12 questions.

13 THE COURT: All right. Sir, thank you very much for
14 your time.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 THE COURT: All right. We're done with the
18 evidence.

19 Any evidence from the defense?

20 MS. SCOTT: Nothing, your Honor.

21 COUNSEL: No, your Honor.

22 THE COURT: All right. So I'll take all this
23 evidence, and consider it, and issue a ruling on Mr. Swan,
24 Patterson, Phillip, and Duris.

25 Was that the plan?

1 MS. TAYLOR: Yes, sir.

2 THE COURT: All right. And then we'll address any
3 individual issues after that opinion, after that ruling comes
4 out with respect to the defendants as their sentencing dates
5 approach.

6 MS. TAYLOR: Yes.

7 THE COURT: If somebody needs a hearing before the
8 sentencing date, if you think we're going to need more than a
9 half hour or 45 minutes, we'll do that.

10 MS. TAYLOR: Okay.

11 THE COURT: Does anyone want to submit any more
12 briefs about anything?

13 MR. DREYER: Your Honor, I have character evidence
14 letters on behalf of Mr. Patterson, and obviously I would
15 like to submit those and make them available to the
16 Government.

17 THE COURT: Okay. Have they been docketed or do you
18 want me to docket them?

19 MR. DREYER: No, they don't need to be docketed.

20 THE COURT: Okay.

21 MR. DREYER: They can just be reviewed by your
22 Honor.

23 THE COURT: Okay.

24 MR. LAIGAIE: Your Honor, I would intend to file a
25 sentencing memorandum --

1 THE COURT: Oh, sure.

2 MR. LAIGAIE: -- prior to sentencing.

3 COUNSEL: So would I.

4 THE COURT: I'm talking about any more briefing on
5 the 3607 issue --

6 COUNSEL: I don't believe so, your Honor.

7 THE COURT: -- on the applicability. I mean you'll
8 have a chance to -- they'll be more evidence, apparently,
9 coming out.

10 MR. LAIGAIE: And I may have something I wish to
11 respond if and when I see that evidence.

12 THE COURT: Right, I understand. But as of today,
13 based on the evidence that the Government's offered?

14 MR. LAIGAIE: No, your Honor.

15 I might submit Hillary Clinton's statement about the
16 V-22.

17 COUNSEL: Or bring her in live.

18 MR. LAIGAIE: Yes.

19 MS. TAYLOR: I don't stipulate to that report. I
20 want you to present the Secretary.

21 THE COURT: Excellent.

22 MS. TAYLOR: It would be a crowning moment.

23 THE COURT: All right. So we can close the record
24 on this other than the things you're going to follow-up on,
25 Ms. Taylor, if anything?

1 MS. TAYLOR: Yes. Yes, your Honor.

2 MS. LUNKENHEIMER: Yes, your Honor, and we'll seek
3 to provide chambers with a copy of our exhibits, so --

4 THE COURT: Okay. Any other thoughts, words of
5 wisdom from anyone?

6 (No response.)

7 THE COURT: All right. It's been a long day. Thank
8 you. Have a good night and I'll -- I'll get your ruling out
9 promptly.

10 Thank you.

11 MS. TAYLOR: Thank you, your Honor.

12 ALL COUNSEL: Thank you, your Honor.

13 (Court adjourned at 5:18 o'clock p.m.)

14 * * *

1		<u>I N D E X</u>		
2	<u>WITNESSES:</u>		<u>DIR</u>	<u>CR</u>
3	David Bouse		<u>REDIR</u>	<u>RECR</u>
4	By Ms. Lunkenheimer	10		
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24		* * *		

	<u>E X H I B I T S</u>	
2	<u>NUMBER</u>	<u>ADMITTED INTO EVIDENCE</u>
3	Jones 1	97
4	HR-15, 8, 9, 5, 7, 6, 11, 1, 2, 4, 14, 14	97
5	Carr 1 through 8, 10 through 13, 14	97
6	Downs 3	99
7	* * *	

CERTIFICATION

I hereby certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

S:/Geraldine C. Laws, CET
Laws Transcription Service

Date 8/1/12